

14 July 2015**Agenda Item: 8****REPORT OF THE SERVICE DIRECTOR FOR ACCESS AND PUBLIC
PROTECTION****ILLEGAL MONEY LENDERS OPERATING WITHIN NOTTINGHAMSHIRE****Purpose of the Report**

1. The purpose of the report is :
 - a. To update Committee on the County Council's existing arrangement with Birmingham City Council in respect of the England Illegal Money Lending Team.
 - b. To agree the attached "Protocol for Illegal Money Lending Team Investigations", and that authority be delegated to the Group Manager, Trading Standards and Community Safety to sign the agreement on behalf of Nottinghamshire County Council and approve minor alterations if required.

Information and Advice

2. The primary legislation governing the consumer credit industry is the Consumer Credit Act 1974 and the Financial Services Act 2012 in respect of matters concerned with the Financial Services and Markets Act 2000. The Trading Standards Service enforces this in each Local Authority area.
3. 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.
4. 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).
5. 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.

6. 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.
7. 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.
8. Funding for the project is provided from the Financial Inclusion Fund administered by the Treasury, and managed and governed by the National Trading Standards Board (NTSB). The Group Manager for Trading Standards and Community Safety is currently the East Midlands Board Member.
9. The team now covering England is hosted by Birmingham City Council and continues to provide a resource to investigate illegal money lending across England.
10. Birmingham was chosen to lead the new England team due to the perceived efficiencies associated with having just one national team. The team, although based in Birmingham, continues to operate the “parachute in and out model”, with a local presence through regional officers, this being the recommended option by research commissioned through Policis.
11. The benefit that this team can bring to Nottinghamshire is significant. The Trading Standards & Community Safety Service, although better placed than many, is not able to provide the level of specialist resource to provide this function. The existing arrangement 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.
12. **Key Statistics** - the Key statistics for the project up to March 2015:
 - Written off over **£64 million** of illegal debts (money victims would have paid back to illegal lenders if the Department had not acted)
 - Taken over **329** prosecutions.
 - 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.
13. 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, H M Revenue and Customs to facilitate a coordinated approach to tackling crime and disorder.

14. Objectives of the Project

15. 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.

16. Evidence 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.
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% up to 117,000% APR in some instances.
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.
19. 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.
20. 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.
21. 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.
22. 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.
23. **Objective 2 - To create a climate where victims can come forward – confident that prosecutions will be undertaken, and convictions obtained, without fear of reprisals.**

24. 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.
25. 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.
26. **Objective 3 – To change the perception amongst those lending that illegal money lending is rarely prosecuted.**
27. 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.
28. **Objective 4 – To develop ways of replacing the removed lenders with more support for their victims.**
29. The Illegal Money Lending Team (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.
30. 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. Partnership working in this area is recognised as being essential in this area of service provision. This will be the key role of the LIAISE officers (Leads in awareness, intelligence, support and education).
31. **Delegation** - In order for Nottinghamshire to fully benefit from the project, 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.
32. The Authority has previously delegated the functions to Birmingham City Council, delegation being made by the Cabinet on 27th July 2011 - 2011/063.
33. In order to ensure clarity in respect of the operation of these arrangements, the attached draft protocol in **appendix one** sets out the processes and practices to enable Birmingham City Council and its officers to undertake investigations and legal procedures.
34. The delegation does not prevent Nottinghamshire Trading Standards and Community Safety Service from undertaking the function. Further the Authority can withdraw the Delegated Power at any time during the Term if it has good reason to do so.

35. **Other Options Considered**

36. To withdraw from the arrangement and carry out the work from resource within the Authority. A further option considered would be for Nottinghamshire Trading Standards Officers to accompany IMLT officers on operations within the area, and to prosecute the cases using County Council resources.

37. Reason/s for Recommendation/s

38. The continuing arrangement adds to the County Council's resources, and enables the Authority to have access to a team of highly trained experts from the IMLT.

39. This area of law enforcement requires specialist resource, expertise, techniques and facilities that the IMLT has in this distinct area.

40. 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.

41. The approval of the draft protocol will support performance of the Authority's duty in relation to enforcement of the provisions of the Consumer Credit Act 1974 and the Financial Services Act 2012 in respect of matters concerned with the Financial Services and Markets Act 2000 by Birmingham City Council.

Statutory and Policy Implications

42. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Crime and Disorder Implications

43. Illegal moneylenders target low-income households and the most vulnerable members of society. This can mean that their activities have disproportionate implications for more deprived areas, and action taken against them supports priorities on tackling 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 individuals and communities. Marginalising rogue traders creates an environment which supports and encourages legitimate credit providers and reduces the fear of crime.

Financial Implications

44. There are no financial implications for Nottinghamshire County Council as a result of this arrangement. All major costs will be funded by the Treasury. Any prosecutions will be undertaken by Birmingham City Council with no liability for costs to the Nottinghamshire.

Public Sector Equality Duty implications

45. 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.

RECOMMENDATION/S

That the committee:

- a. Notes the content of the report and the benefits of the existing arrangement with Birmingham City Council in respect of the investigation and prosecution of illegal money lending activity.
- b. Agrees the attached “Protocol for Illegal Money Lending Team Investigations”, and further delegates the authority to the Group Manager Trading Standards and Community Safety to sign the agreement on behalf of Nottinghamshire County Council, and approve minor alterations if required.

PAUL MCKAY

Service Director, Access and Public Protection

For any enquiries about this report please contact:

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Constitutional Comments (SLB 29/06/2015)

46. Community Safety Committee is the appropriate body to consider the content of this report.

Financial Comments (KAS 25/06/15)

47. The financial implications are contained within paragraph 44 of the report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- ‘None’

Electoral Division(s) and Member(s) Affected

- ‘All’

**DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS (BIS)
ENGLAND ILLEGAL MONEY LENDING PROJECT**

**PROTOCOL FOR ENGLAND ILLEGAL MONEY LENDING SECTION
INVESTIGATIONS**

Interpretation

For the purposes of this Protocol –

“BCC” means Birmingham City Council

“NCC” means Nottinghamshire County Council Trading Standards

“IMLS” means the Illegal Money Lending Section

“Delegated Power” means the discharge of the function of the Enforcement of the Consumer Credit Act 1974, the enabling provisions within the Financial Services Act 2012 in respect of matters concerned with the Financial Services and Markets Act 2000 granted to BCC by NCC 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 2012, 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 2018

“Birmingham Trading Standards” means Regulatory Services of BCC

“Nottinghamshire Contact Officer (NCCCO)” means the relevant person appointed by the Group Manager Trading Standards and Community Safety of NCC 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 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 / NTSB / 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 Nottinghamshire County Council
- The mechanisms whereby Nottinghamshire County 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 NCC
- 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, to include matters in respect of the Financial Services and Markets Act 2000 within the area of Nottinghamshire County Council. The protocol encourages the exchange of information and a working partnership approach between BCC and NCC 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 NCC to withdraw the Delegated Power at any time during the Term. However NCC 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 NCC.

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 Regulation and Enforcement 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 Group Manager Trading Standards and Community Safety of NCC 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 Template.
- 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 Template, 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 Nottinghamshire County Council Area

- 4.1 NCC will designate and appoint a Nottinghamshire County Council Contact Officer (NCCCO).
- 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 NCCCO, brief the NCCCO on any intelligence gathered, any progress made on investigations and/or prosecutions pending or otherwise, relating to or affecting Nottinghamshire 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 Section to keep the NCCCO updated on the progress of investigations and enquiries being carried out in Nottinghamshire 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 NCCCO.
- 4.4 The IMLS will have regular contact with the Police and other Government agencies. The Head of Illegal Money Lending Section will consult the NCCCO 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 NCCCO and seek to develop close links between those agencies and BCC.
- 4.5 The Head of Illegal Money Lending Section will as soon as reasonably practicably inform the NCCCO of the outcome of any concluded prosecution proceedings conducted within Template.

- 4.6 BCC, where possible, will consult with NCC 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 NCCCO in advance. Upon being notified of an intention to contact such a body, Nottinghamshire County Council Trading Standards may arrange for one of their own officers to accompany the relevant officer of the IMLS on any visit.
- 4.8 Where the Head of Illegal Money Lending Section and the Group Manager Trading Standards and Community Safety of Nottinghamshire County Council agree that an officer or officers of Nottinghamshire County Council Trading Standards will be actively involved in an investigation, that officer will remain an employee of NCC 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 Group Manager Trading Standards and Community Safety of Nottinghamshire County Council consider necessary and/or appropriate.
- 4.9 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 NCC officer.
- 4.10 The exercise by BCC of these arrangements shall be at no cost to NCC
- 4.11 BCC shall have an Appropriate Contact Officer.
- 4.12 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 NCC 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 Nottinghamshire having regard to any statutory limitations/restrictions.

- 5.3 Information and intelligence will be provided by the NCCCO 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 NCC 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 Nottinghamshire 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 FSMA or 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 FSMA or the Consumer Credit Act 1974, if required, NCC 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 NCC ought reasonably to be aware of. NCC 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 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 NCC 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 NCC 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 NCC 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: 2015

Signed

Mark Walker
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Nottinghamshire County Council

Signed

Jacqui Kennedy
Director of Regulation and Enforcement
Birmingham City Council