

From: Mike Overbeke – Head of Public Protection
To: Mike Hill – Cabinet Member for Community Services
Subject: 15/00048 - Protocol for National Illegal Money Lending Team

Key Decision; Affects more than 2 Electoral Divisions

Classification: **Unrestricted**

Past Pathway of Paper: None

Future Pathway of Paper: Cabinet Member Decision

Electoral Division: All

Summary

This report seeks approval for Kent County Council to authorise Birmingham City Council to investigate and institute proceedings against illegal money lenders operating within the Kent County Council area.

Recommendations:

The Cabinet Member for Community Services is asked: to:

1. agree the delegation of the function of the enforcement of Part III of the Consumer Credit Act 1974 and the enabling provisions within the Financial Services Act 2012 in respect of matters concerned with the Financial Services and Markets Act 2000 be carried out in Kent by Birmingham City Council and delegate the power of prosecution to Birmingham City Council for any matters associated with or discovered during an investigation by the illegal money lending team; and,
2. agree that the attached “Protocol for Illegal Money Lending Team Investigations” be agreed and authority be delegated to the Head of Trading Standards to enter into the agreement on behalf of Kent County Council and approve minor alterations if required.

1. Background

- 1.1 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. Trading Standards 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.

- 1.2 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.
- 1.3 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.
- 1.4 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 National Trading Standards Board (NTSB).
- 1.5 The England team is hosted by Birmingham City Council and continues to provide a resource to investigate illegal money lending across England.
- 1.6 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, this being the recommended option by the recent research commissioned through Policis.
- 1.7 The benefit that this team can bring to Kent is significant. KCC 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. KCC has been part of this project since a protocol was signed in 2011. This has now expired and changes to the law since that date require a new delegation at this time.

2. Key Statistics

- 2.1 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 IMLS had not acted)
- Taken over 325 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.

2.2 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.

3. Objectives of the Project

3.1 **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.

3.1.1 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.

3.1.2 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.

3.1.3 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.

3.1.4 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.

3.1.5 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.

3.1.6 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.

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

3.2.1 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.

3.2.2 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.

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

3.3.1 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.

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

3.4.1 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.

3.4.2 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 LIAISE officers (Leads in awareness, intelligence, support and education).

4. Delegation

- 4.1 In order to expand the scheme into Kent, 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.
- 4.2 It is proposed that the delegation will continue until 31st March 2018 with a view to extending the arrangement if successful.
- 4.3 In order to ensure clarity in respect of the operation of these arrangements, the attached draft protocol (appendix 1) sets out the processes and practices to enable Birmingham City Council and its officer to undertake investigations and legal procedures.
- 4.4 This delegation does not prevent Kent County Council Trading Standards from undertaking the function.

5. Resource Implications

- 5.1.1 There are no financial implications for Kent 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 Kent will be contained within the Trading Standards budget.

6. Legal Considerations

- 6.1 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. Kent County Council is a Local Weights & Measures Authority. 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 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.
- 6.2 Any prosecutions will be undertaken by Birmingham City Council with no liability for costs to Kent County Council.

7. Section 17 – Crime and Disorder Act

- 7.1 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.
- 7.2 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.

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

8. Equal Opportunities

- 8.1 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.

9. Risk Implications/Assessment

- 9.1 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 and any costs associated with enforcement and prosecution will be borne by that authority.

10. Alternative Options

- 10.1 There are no other viable options as the national funding is provided on the basis of the service being provided by the Birmingham team.

11. Conclusion

- 11.1 This proposal, if agreed, will add to the County Council's resources and will enable Kent County Council Trading Standards to continue to have access to a team of highly trained experts from the IMLT.
- 11.2 This area of law enforcement requires specialist resource, expertise, techniques and facilities which Kent County Council Trading Standards 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.
- 11.3 The recommendations 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.

12. Recommendations:

The Cabinet Member for Community Services is asked to agree:

- 12.1 That the function of the enforcement of Part III of the Consumer Credit Act 1974 and the enabling provisions within the Financial Services Act 2012 in respect of matters concerned with the Financial Services and Markets Act 2000 be carried out in Kent by Birmingham City Council and delegate the

powers of enforcement and prosecution to Birmingham City Council for any matters associated with or discovered during an investigation by the illegal money lending team.

- 12.2 That the attached “Protocol for Illegal Money Lending Team Investigations” be agreed and authority be delegated to the Head of Trading Standards to enter into the agreement on behalf of Kent County Council and approve minor alterations if required.

13. Contact details

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