

**CABINET MEMBER FOR SAFER & STRONGER COMMUNITIES
30 NOVEMBER 2009**

**AUTHORISATION FOR THE BIRMINGHAM CITY COUNCIL ILLEGAL
MONEY LENDING TEAM TO OPERATE IN OXFORDSHIRE**

Report by Director of Community Safety and Shared Services

Introduction

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

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.
3. 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, 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 can be subject to intimidation, theft, forced prostitution and extreme physical violence.
4. 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 and 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.
5. The scheme, initially working across the midlands, has already been extended to cover a number of other areas.

6. Funding for the project is provided from the Financial Inclusion Fund administered by the Treasury and managed by the Department for Business, Innovation and Skills (BIS). The Treasury and BIS announced that due to the success of the Birmingham team that funding will continue and can be used to extend the initiative to other authorities.
7. The benefit that this team can bring to Oxfordshire is significant. Oxfordshire Trading Standards Service, like most local authorities, is not able to provide the level of specialist resource to deliver 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.
8. Key statistics for the project up to 1 August 2009 are given below:
 - Over 350 targets identified so far.
 - Over 49 years of prison sentences to date as well as one indefinite sentence for the protection of the public.
 - Over 10000 victims helped.
 - 12 guns taken off the street.
 - Proceedings instituted against over 80 defendants so far.
 - £16,000,000 debt wiped out.

In addition the project has provided for two Financial Inclusion Partnership Officers.

Summary of the Progress of the National Project against its Objectives

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.

9. 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 often do not lend to people residing in this type of accommodation due to the health and safety risks for their collectors.
10. 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 people looking to set up businesses. Interest rates range from 100% up to 117,000% APR in some instances.
11. 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.

12. 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.
13. 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.
14. 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 to establish their address. A significant proportion of target individuals 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.

15. 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 community in areas that it operates and in the 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.
16. 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 information systems 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.

17. 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.

18. 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.
19. 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 Inclusion Partnership Officer'.

Delegation

20. In order to expand the scheme into Oxfordshire, Birmingham City Council requires formal delegation of functions to carry out investigations under the Consumer Credit Act 1974 and to prosecute matters in the area.
21. It is proposed that the delegation will continue until 31st March 2011 with a view to extending the arrangement if successful.
22. This delegation does not prevent Oxfordshire County Council's Trading Standards Service from undertaking functions under the Consumer Credit Act 1974.

Legal Considerations

23. 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 (in this case via the Cabinet Member for Safer & Stronger Communities) 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.
24. Any prosecutions will be undertaken by Birmingham City Council with no liability for costs to Oxfordshire County Council.

Financial and Staff Implications

25. There are no financial implications for Oxfordshire 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 Oxfordshire will be contained within the Trading Standards Service budget.

Conclusions

26. This proposal, if agreed, will add to the County Council's resources and will enable Oxfordshire Trading Standards Service to have access to a team of highly trained experts from the IMLT. This will contribute to delivery of the County Council priority to provide for Healthy and Thriving Communities.
27. This area of law enforcement requires specialist resource, expertise, techniques and facilities which Oxfordshire Trading Standards Services 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.
28. The recommendations will support performance of the Authority's duty in relation to enforcement of the provisions of the Consumer Credit Act 1974

RECOMMENDATION

29. **The Cabinet Member for Safer & Stronger Communities is RECOMMENDED to:**
 - (a) **agree the delegation of the function of the enforcement of Part III of the Consumer Credit Act 1974 to be carried out in Oxfordshire by Birmingham City Council and to 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;**
 - (b) **agree the attached "Protocol for Illegal Money Lending Team Investigations" and that authority be delegated to the Head of Trading Standards and Community Safety to enter into the agreement on behalf of Oxfordshire County Council and to approve minor alterations if required.**

JOHN PARRY
Director for Community Safety & Shared Services

Background papers: Nil.

Contact Officer: Richard Webb, Deputy Head of Trading Standards and Community Safety, (01865) 815791

November 2009

**DEPARTMENT FOR BUSINESS ENTERPRISE & REGULATORY REFORM
ILLEGAL MONEY LENDING PROJECT**

PROTOCOL FOR ILLEGAL MONEY LENDING TEAM INVESTIGATIONS

Interpretation

For the purposes of this Protocol –

“**BCC**” means Birmingham City Council

“**OCC**” means Oxfordshire County Council

“**OCCTS**” means Oxfordshire County Council Trading Standards

“**IMLT**” means the Illegal Money Lending Team

“**Delegated Power**” means the discharge of the function of the Enforcement of Part III of the Consumer Credit Act 1974 granted to BCC by OCC 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, section 13(7) and 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 2011

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

“**Oxfordshire Contact Officer (OCCO)**” means the relevant person appointed by the Head of Trading Standards and Community Safety of OCC to liaise with the IMLT team manager 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 and BCL or the Illegal Money Lending Manager of Birmingham Trading Standards and the Head of Trading Standards and Community Safety OCC or any person authorised by them

1. Application

1.1 This Protocol applies to the DBERR / HM Treasury funded 'Illegal Money Lending Project' and covers the following issues:-

- The conduct of investigations and associated working practices for the IMLT officers when conducting investigations or operating in Oxfordshire.
- The mechanisms whereby Oxfordshire County Council is updated on the progress of the project and any significant issue relating thereto.
- The exchange of intelligence and information between the IMLT and OCCTS
- 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 IMLT to enforce the provisions of the Consumer Credit Act 1974 within the area of OCC. The protocol encourages the exchange of information and a working partnership approach between BCC and OCCTS 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 OCC to withdraw the Delegated Power at any time during the Term. However OCC 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 OCC.

3. The IMLT

3.1 It is recognised that officers in the IMLT 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 IMLT will comprise of a team manager and up to 30 staff directly employed by BCC. The IMLT team manager will be responsible for the day-to-day operation and supervision of the IMLT.

3.3 The IMLT team manager will report directly to the Director of Regulatory Services or Head of Trading Standards BCC as appropriate.

- 3.4 The Illegal Money Lending Team Manager BCC will quarterly from the Commencement Date, provide a progress report to the Head of Trading Standards & Community Safety of OCC 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 Oxfordshire
- 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 Oxfordshire, 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 Oxfordshire County Council Area

- 4.1 BCC will designate and appoint an Oxfordshire Contact Officer (OCCO).
- 4.2 The IMLT team manager will at any time the IMLT team manager considers necessary and prudent, or at the request of the OCCO, brief the OCCO on any intelligence gathered, any progress made on investigations and/or prosecutions pending or otherwise, relating to or affecting Oxfordshire and/or its residents.
- 4.3 Further to Clause 4.2 above, all reasonable steps will be taken by the IMLT team manager to keep the OCCO updated on the progress of investigations and enquiries being carried out in Oxfordshire and any changes made or introduced by BERR concerning the 'Illegal Money Lending Project'. It is incumbent on the IMLT team manager to maintain regular dialogue/communication with the OCCO.
- 4.4 The IMLT will have regular contact with the Police and other Government agencies. The IMLT team manager will consult the OCCO to identify any local arrangements, investigations and protocols before any investigation is commenced in pursuance of the 'Illegal Money Lending Project'. Wherever possible, the IMLT team manager will actively involve the OCCO and seek to develop close links between those agencies and BCC.
- 4.5 The IMLT team manager will as soon as reasonably practicably inform the OCCO of the outcome of any concluded prosecution proceedings conducted within Oxfordshire.
- 4.6 BCC, where possible, will consult with OCCTS in good time before issuing any press release concerning any prosecution pursued by BCC pursuant to this Protocol.

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- 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 OCCO in advance. Upon being notified of an intention to contact such a body, Oxfordshire Trading Standards may arrange for one of their own officers to accompany the relevant officer of the IMLT on any visit.
- 4.8 Where the IMLT team manager and the Head of Trading Standards & Community Safety of Oxfordshire County Council agree that an officer or officers of Oxfordshire Trading Standards will be actively involved in an investigation, that officer will remain an employee of OCCTS but for the purpose of that investigation, will come under the control of the IMLT team manager. Such agreement will be subject to the IMLT team manager 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 IMLT team manager and the Head of Trading Standards and Community Safety of Oxfordshire County Council consider necessary and/or appropriate.
- 4.9 Unless there is prior agreement with the IMLT team manager 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 OCCTS officer.
- 4.10 The exercise by BCC of these arrangements shall be at no cost to OCCTS
- 4.11 BCC shall have an Appropriate Contact Officer.
- 4.12 In the absence of the IMLT team manager, the role, duties, and responsibilities of the IMLT team manager 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 IMLT will rely on receiving information about Illegal Money Lender activities.
- 5.2 OCCTS will endeavour to provide as much relevant information and intelligence as reasonably and practicably possible to the IMLT concerning any investigation being carried out within Oxfordshire having regard to any statutory limitations/restrictions, the time likely to be expended, resources available and costs likely to be incurred by OCCTS in providing the same.
- 5.3 Information and intelligence will be provided by the OCCO to the IMLT team manager or a person designated by him/her.

- 5.4 BCC IMLT 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 IMLT as a source of intelligence.
- 5.5 BCC, IMLT and OCCTS 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 IMLT in Oxfordshire 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 IMLT officers and any other officer or person within the direct management of the IMLT 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 Team Manager, IMLT BCC, recommends a prosecution under Part III of the Consumer Credit Act 1974, if required, OCCTS 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 OCCTS ought reasonably to be aware of. OCCTS 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 IMLT and shall ensure that the IMLT shall comply with all legislative

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requirements and take all reasonable steps to ensure any actions taken are lawful and within the spirit of the protocol.

- 7.2 OCCTS 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 OCCTS 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 OCCTS 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 IMLT or BCC from discharging their duties, as appropriate.

Commencement date:

Signed

Nigel Strick
Head of Community Safety and Trading Standards
Oxfordshire County Council

Signed

Jacqui Kennedy
Director of Regulatory Services
Birmingham City Council.