
**DELEGATION OF AUTHORITY FOR THE NATIONAL ILLEGAL MONEY
LENDING TEAM**

**Responsible Cabinet Member – Councillor Chris McEwan,
Economy and Regeneration Portfolio**

Responsible Director - Richard Alty, Director of Place

SUMMARY REPORT

Purpose of the Report

1. To seek Members approval for the delegation of the Council’s function relating to the enforcement of legislation against illegal money lenders operating within the Borough of Darlington to Birmingham City Council.

Summary

2. The Government’s ‘Modernising Agenda’ for Trading Standards Services has introduced various centrally funded projects to protect consumers and reputable businesses. The Department for Business Innovation and Skills (BIS) funded the regional Scambuster and Illegal Money Lending Teams, which Members have previously approved to enforce specific legislation within the Borough of Darlington.
3. BIS have reorganised the regional Illegal Money Lending Teams into national teams for England, Scotland and Wales. The England Illegal Money Lending Team will be hosted by Birmingham City Council, who will require authorisation by each local authority to enforce legislation within their Council area.

Recommendation

4. It is recommended that :-
 - (a) Members agree the delegation of the function for the enforcement of Part III of the Consumer Credit Act 1974 to be carried out in the Borough of Darlington 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 England Illegal Money Lending Team.
 - (b) The ‘Protocol for Illegal Money Lending Team Investigations’ (**Appendix A**) be agreed and the authority delegated to the Director of Place to enter into the agreement on behalf of Darlington Borough Council and approve minor alterations if required.

Reasons

5. The recommendations are supported by the following reasons :-
- (a) Delegation of the Council's function relating to the enforcement of Part III of the Consumer Credit Act 1974 to Birmingham City Council would enable the Illegal Money Lending Team for England to enforce the legislation within the Borough of Darlington.
 - (b) This would enable the Illegal Money Lending Team for England to investigate illegal money lenders operating within the Borough of Darlington and deliver more effective enforcement action against lenders who are operating across the country.

Richard Alty
Director of Place

Background Papers

- (i) Local Government Act 1972
- (ii) Local Government Act 2000
- (iii) The Local Authorities (Functions and Responsibilities) (England) Regulations 2000
- (iv) The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000

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S17 Crime and Disorder	The contents of this report will have an effect on preventing and detecting offences under the relevant legislation.
Health and Well Being	The Illegal Money Lending Team, in targeting illegal money lenders, will affect the lifestyle choices of their victims.
Carbon Impact	There is no specific carbon impact.
Diversity	There is no specific diversity impact.
Wards Affected	The proposals affect all wards equally.
Groups Affected	No specific groups identified apart from the victims of any crimes committed and those who commit them.
Budget and Policy Framework	This report does not represent a change to the budget and policy framework.
Key Decision	This is not a Key Decision.
Urgent Decision	This is not an Urgent Decision.
One Darlington: Perfectly Placed	Safer theme - reducing crime and fear of crime.
Efficiency	This increases the number of officers authorised to enforce Trading Standards legislation within the Borough of Darlington.

MAIN REPORT

Information and Analysis

6. Research funded by the Department of Business Innovation and Skills (BIS) identified the extent of this type of activity as well as the reasons that people use illegal money lenders. Regional Illegal Money Lending Teams were established, with the North East Team being hosted by Redcar and Cleveland Borough Council. The teams were funded through the Financial Inclusion Fund, administered by the Treasury and managed by BIS.
7. On 29 December 2010, Business Minister, Edward Davey, announced that £5.2m in funds will be available to continue the national illegal money lending project for 2011/12.
8. In addition, the Minister also announced that BIS intended to restructure the project by moving the project to a three national team model. The Minister indicated the BIS were looking to maintain front line services whilst providing a value for money project. The England Team will be hosted by Birmingham City Council and will continue to provide a resource to investigate illegal money lending across England.
9. Birmingham City Council was chosen to lead the new England team due to the efficiencies associated with the expansion of the Birmingham Team. This was favoured to creating a brand new team that would attract high development and set up costs. Centralising national services was key. The team will be based in Birmingham, with a local presence through regional officers, this being the recommended option by the recent research commissioned through Policis.
10. The benefit that this team can bring to the Borough is significant. Darlington Borough Council Trading Standards, like most local authorities, is not able to provide the level of specialist resource to provide this function.
11. 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, 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.
12. To facilitate the delegation of powers to Birmingham City Council, a Protocol for Illegal Money Lending Team Investigations (**Appendix A**) has been proposed. The protocol encourages the exchange of information and a working partnership approach between Birmingham City Council and Darlington Borough Council in relation to the Consumer Credit Act 1974.
13. There are no financial implications for Darlington Borough Council. All major costs will be funded by the Treasury. Any prosecutions will be undertaken by Birmingham City Council with no liability for costs to Darlington Borough Council.

Outcome of Consultation

14. The Trading Standards Heads of Service in the North East support the delegation of the enforcement of Part III of the Consumer Credit Act 1974 to Birmingham City Council.

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

PROTOCOL FOR ILLEGAL MONEY LENDING SECTION INVESTIGATIONS

Interpretation

For the purposes of this Protocol –

“**BCC**” means Birmingham City Council

“**DBC**” means Darlington Borough Council

“**IMLS**” means the Illegal Money Lending Section

“**Delegated Power**” means the discharge of the function of the Enforcement of Part III of the Consumer Credit Act 1974 granted to BCC by DBC 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, 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 2015

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

“**Darlington Borough Council Contact Officer (DBCCO)**” means the relevant person appointed by the Head of Regulatory Services of DBC 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 Regulatory Services, Head of Trading Standards or the Head of Illegal Money Lending of Birmingham Regulatory Services or any person nominated by the Council or authorised by them

1. Application

1.1 This Protocol applies to the BIS / 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 the Borough of Darlington.
- The mechanisms whereby Darlington Borough 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 DBC
- 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 within the area of Darlington Borough Council. The protocol encourages the exchange of information and a working partnership approach between BCC and DBC 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 DBC to withdraw the Delegated Power at any time during the Term. However DBC 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 DBC.

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 team manager and up to 45 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 Regulatory Services 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 Head of Regulatory Services of DBC 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 the Borough of Darlington.
- 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 the Borough of Darlington, 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 Darlington Borough Council Area

- 4.1 DBC will designate and appoint a Darlington Borough Contact Officer (DBCCO).
- 4.2 The Head of Illegal Money Lending Section will at any time they consider it necessary and prudent, or at the request of the DBCCO, brief the DBCCO on any intelligence gathered, any progress made on investigations and/or prosecutions pending or otherwise, relating to or affecting the Borough of Darlington 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 DBCCO updated on the progress of investigations and enquiries being carried out in the Borough of Darlington and any changes made or introduced by BIS concerning the 'Illegal Money Lending Project'. It is incumbent on the Head of Illegal Money Lending Section to maintain regular dialogue/communication with the DBCCO.
- 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 DBCCO 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 DBCCO 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 DBCCO of the outcome of any concluded prosecution proceedings conducted within the Borough of Darlington.
- 4.6 BCC, where possible, will consult with DBC 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 DBCCO in advance. Upon being notified of an intention to contact such a body, Darlington Borough 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 Head of Regulatory Services of Darlington Borough Council agree that an officer or officers of Darlington Borough Council Trading Standards will be actively involved in an investigation, that officer will remain an employee of DBC 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 Head of Regulatory Services of Darlington Borough 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 DBC officer.
- 4.10 The exercise by BCC of these arrangements shall be at no cost to DBC
- 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 DBC 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 the Borough of Darlington having regard to any statutory limitations/restrictions, the time likely to be expended, resources available and costs likely to be incurred by DBC in providing the same.
- 5.3 Information and intelligence will be provided by the DBCCO 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 DBC 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 the Borough of Darlington 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 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 Head of Service, IMLS BCC, recommends a prosecution under Part III of the Consumer Credit Act 1974, if required, DBC 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 DBC ought reasonably to be aware of. DBC 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 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 DBC 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 DBC 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 DBC 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: ? 2011

Signed

Darlington Borough Council

Signed

Jacqui Kennedy
Director of Regulatory Services
Birmingham City Council