

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Policy and Resources
Date of Decision:	12 March 2015
Decision Title:	Illegal Money Lending - Legal Authorisations
Decision Reference:	6482
Report From:	Director of Culture, Communities and Business Services

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1. Executive Summary

1.1. This report seeks to refresh and renew approval to delegate to Birmingham City Council and the officers within its Illegal Money Lending Team the investigation, and institution, of proceedings against illegal money lenders operating within Hampshire, in accordance with Section 9EA of the Local Government Act 2000 and the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2012.

2. Contextual information

2.1. The primary legislation governing the consumer credit industry is the Consumer Credit Act 1974 and this is enforced, in each local authority area, by the Trading Standards Service. The Act is based upon 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. The Financial Conduct Authority 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.

2.2. 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.

2.3. An Illegal Money Lending Team was established within Birmingham Trading Standards as a pilot project in England in 2007, one of only two in Great Britain; the other pilot area being Glasgow – covering Scotland. The remit of the team was 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 was made up of highly experienced investigators with a broad range of backgrounds and investigative skills. This pilot was duly extended to other areas and at the end of 2010 the Business Minister announced that such teams would be restructured onto a national level. The Illegal Money Lending Team established within Birmingham Trading Standards became the national Illegal Money Lending Team for England.

2.4. Key statistics for the project up until January 2015:

- Approximately 24,000 victims of loan sharks assisted with their debt problems
- £55 million pounds of illegal debt written off
- More than 310 prosecutions taken in respect of illegal money lending with cumulative prison sentences of approximately 200 years imposed

2.5. Specific positive benefits in relation to Hampshire include:

- Educational teaching resource packs devised for delivery of lessons to children on how to manage money and avoid loan sharks
- General awareness sessions regarding illegal money lenders delivered in hard to reach communities
- Community Advocates Sessions delivered in Gosport
- Conviction of a Gosport man in respect of illegal money lending activity in the south of Hampshire in 2008.

2.6. Approval of the nature recommended in this report was previously granted in 2007, however, due to restructuring within the former Regulatory Services and current Trading Standards Service, it is appropriate to renew this approval to enable the work of the Illegal Money Lending Team to continue in Hampshire.

3. Finance

3.1. The decisions which are sought to be recommended by this report will have no effect upon the budgetary position of Hampshire County Council.

4. Impact on Performance

4.1. By supplementing Trading Standards resources at no extra cost to Hampshire County Council, our performance in relation to enforcement of the provisions of the Consumer Credit Act 1974 is increased.

- 4.2. Should the recommended decisions not be made, there will be a negative impact on performance. The Illegal Money Lending Team would not be able to operate within the administrative area of Hampshire County Council and vulnerable residents within Hampshire would not benefit from the potential protection from loan sharks.

5. Recommendations

- 5.1. That Birmingham City Council and the Illegal Money Lending Team be authorised to investigate and institute proceedings against illegal moneylenders operating within Hampshire.
- 5.2. That a Protocol be entered into with Birmingham City Council in accordance with Section 9EA of the Local Government 2000 and the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2012 and other enabling powers delegating powers and duties concurrent with Hampshire County Council's powers and duties in respect of the enforcement of Part III of the Consumer Credit Act 1974; subject to the terms and conditions contained within the agreed Protocol.
- 5.3. That the Head of Trading Standards, or where no equivalent role exists the Monitoring Officer of the County Council, be authorised to determine the terms of any such Protocol; to enter into it on behalf of Hampshire County Council; to terminate it; and, subject to the agreement of the Executive Member for Policy and Resources, to extend it.
- 5.4. That the 'Protocol for Illegal Money Lending Section Investigations' set out in Appendix 1 is approved and authority is delegated to the Head of Trading Standards, or where no equivalent role exists the Monitoring Officer of the County Council, to approve minor alterations as required to ensure agreement.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	Yes
Corporate Business plan link number (if appropriate):	
Maximising well-being:	Yes
Corporate Business plan link number (if appropriate):	
Enhancing our quality of place:	No
Corporate Business plan link number (if appropriate):	

Other Significant Links

Links to previous Member decisions:		
<u>Title</u> Executive Member for Policy and Resources – 'Illegal Money Lending, Legal Authorisations'	<u>Reference</u> Item 5	<u>Date</u> 7 December 2007
Direct links to specific legislation or Government Directives		
<u>Title</u> Consumer Credit Act 1974		<u>Date</u> 1974

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;

Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;

Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;

Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;

Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

An equalities impact assessment has been considered in the development of this report and no adverse impact has been identified.

2. Impact on Crime and Disorder:

2.1. This report makes recommendations for effective enforcement of the law relating to illegal money lending in Hampshire. This in turn could lead to a reduction in offending rates and an improvement in resident awareness and empowerment.

3. Climate Change:

a) How does what is being proposed impact on our carbon footprint / energy consumption?

This report has no direct impact on the County Council's carbon footprint/energy consumption.

b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

This report has no direct impact on climate change.

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

“HTS” means Hampshire County Council Trading Standards

“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 Hampshire County Council in pursuance of section 101 and 222 of the Local Government Act 1972, Regulation 5 of the Local Authorities (Arrangements for Discharge of Functions) (England) Regulations 2012, section 9EA 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

“HTS Contact Officer (HTSCO)” means the relevant person appointed by the Head of Trading Standards of Hampshire County Council 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 / 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 Hampshire
- The mechanisms whereby Hampshire 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 HTS

- 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 Hampshire County Council. The protocol encourages the exchange of information and a working partnership approach between BCC and HTS 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 Hampshire County Council to withdraw the Delegated Power at any time during the Term. However Hampshire County Council 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 Hampshire County Council.

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 Head of Trading Standards of Hampshire County Council 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 Hampshire.

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 Hampshire, 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 Hampshire County Council Area

4.1 HTS will designate and appoint a Hampshire County Council Contact Officer (HTSCO).

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 HTSCO, brief the HTSCO on any intelligence gathered, any progress made on investigations and/or prosecutions pending or otherwise, relating to or affecting Hampshire 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 HTSCO updated on the progress of investigations and enquiries being carried out in Hampshire 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 HTSCO.

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 HTSCO 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 HTSCO 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 HTSCO of the outcome of any concluded prosecution proceedings conducted within Hampshire.

4.6 BCC, where possible, will consult with HTS 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 HTSCO in advance. Upon being notified of an intention to contact such a body, Hampshire 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 Head of Trading Standards of Hampshire County Council agree that an officer or officers of

Hampshire County Council Trading Standards will be actively involved in an investigation, that officer will remain an employee of Hampshire County Council 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 Trading Standards of Hampshire 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 Hampshire County Council officer.

4.10 The exercise by BCC of these arrangements shall be at no cost to Hampshire County Council

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 HTS 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 Hampshire having regard to any statutory limitations/restrictions.

5.3 Information and intelligence will be provided by the HTSCO 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 HTS 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 Hampshire 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, HTS 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 HTS ought reasonably to be aware of. HTS 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 HTS 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 HTS 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 HTS 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: 1 April 2015

Signed

Head of Trading Standards
Hampshire County Council

Signed

Director of Regulation and Enforcement
Birmingham City Council.