

<b>CABINET MEETING – 22 JUNE 2011</b>  <b>EXECUTIVE SUMMARY SHEET – PART 1</b>	
<b>Title of Report:</b> Discharge of functions under Part III of the Consumer Credit Act 1974 of Sunderland City Council by Birmingham City Council in relation to illegal moneylenders.	
<b>Author(s):</b> Joint Report of the Executive Director of City Services and the Executive Director of Commercial and Corporate Services.	
<b>Purpose of Report:</b> This report seeks approval for Sunderland City Council to authorise Birmingham City Council to investigate and institute legal proceedings under Part III of the Consumer Credit Act 1974 against illegal moneylenders operating within the Council's area.	
<b>Description of Decision:</b> <p>That the Cabinet agree the discharge of its function of the enforcement of Part III of the Consumer Credit Act 1974 be carried out in Sunderland by Birmingham City Council (pursuant to Section 101 of the Local Government Act 1972, Regulation 7 of the Local Authority (Arrangements for Discharge of Functions) (England) Regulations 2000 and Sections 13 and 19 of the Local Government Act 2000).</p> <p>That authority be delegated to the Executive Director of City Services to enter into an agreement on behalf of Sunderland City Council with Birmingham City Council known as the 'Protocol for Illegal Money Lending Section Investigations' ("the Protocol") and for the Executive Director of City Services to approve minor amendments to the Protocol if required.</p>	
<b>Is the decision consistent with the Budget/Policy Framework?</b> <span style="float: right;"><b>Yes</b></span>	
<b>If Not Council approval is required to change the Budget/Policy Framework</b>	
<b>Suggested reason(s) for Decision:</b> To add to the City Council's resources and enable Sunderland Trading Standards to have access to a team of highly trained experts from the IMLT, if intelligence is received that illegal money lending is present in the Sunderland area. To obtain specialist resource, expertise, techniques and facilities to which Sunderland Trading Standards would not otherwise have access. To support performance of the Council's duty in relation to enforcement of the provisions of the Consumer Credit Act 1974.	
<b>Alternative options to be considered and recommended to be rejected:</b> There are no other viable options as the funding is provided on the basis of expanding the Birmingham team.	
<b>Is this a "Key Decision" as defined in the Constitution?</b> No	<b>Relevant Scrutiny Committee:</b> Community and Safer City
<b>Is it included in the Forward Plan?</b> No	



**DISCHARGE OF FUNCTIONS UNDER PART III OF THE CONSUMER CREDIT ACT 1974 OF SUNDERLAND CITY COUNCIL BY BIRMINGHAM CITY COUNCIL IN RELATION TO ILLEGAL MONEYLENDERS.****1.0 Purpose of Report**

- 1.1 This report seeks approval for Sunderland City Council to authorise Birmingham City Council to investigate and institute legal proceedings under Part III of the Consumer Credit Act 1974 against illegal moneylenders operating within the Council's area.

**2.0 Description of Decision**

- 2.1 That the Cabinet agree that the discharge of its function of the enforcement of Part III of the Consumer Credit Act 1974 (the 'Act') be carried out in Sunderland by Birmingham City Council (pursuant to Section 101 of the Local Government Act 1972, Regulation 7 of the Local Authority (Arrangements for Discharge of Functions) (England) Regulations 2000 and Sections 13 and 19 of the Local Government Act 2000).
- 2.2 That authority be delegated to the Executive Director of City Services to enter into an agreement on behalf of Sunderland City Council with Birmingham City Council known as the 'Protocol for Illegal Money Lending Section Investigations' ("the Protocol") and for the Executive Director of City Services to approve minor amendments to the Protocol if required.

**3.0 Background**

- 3.1 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.
- 3.2 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.

- 3.3 An Illegal Money Lending Team (“IMLT”) was established within Birmingham City Council 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.
- 3.4 The scheme, initially working across the Midlands, has already been extended to cover the North West, East of England, South East and Yorkshire and Humber areas.
- 3.5 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 moneylenders. Funding for the project is provided from the Financial Inclusion Fund administered by HM Treasury and managed by BIS. HM Treasury and BIS announced that, due to the success of the Birmingham team, funding will continue and can be used to roll out to other authorities.
- 3.6 On 29 December 2010 Business Minister Edward Davey announced that £5.2 million in funds will be available to continue the national illegal money lending project for 2011/12 through trading standards services.
- 3.7 In addition, the Minister also announced that BIS intended to restructure the project by moving to a three national teams model. The Minister indicated that BIS were looking to maintain front line services whilst providing a value for money project. The English team will be hosted by Birmingham City Council and will continue to provide a resource to investigate illegal money lending across England.
- 3.8 Birmingham was chosen to lead the new England team due to the efficiencies associated with the expansion. This was favoured against the creation of a brand new team that would attract high development and set up costs. Centralising national services was considered to be crucial. The team, based in Birmingham, will continue to operate a “parachute in and out model”, with a local presence being provided through regional officers; this being the option recommended by recent research commissioned through Policis, an independent research consultancy.
- 3.9 Although all services provided by the IMLT in the Sunderland area will be ‘intelligence led’, the benefit that the team can bring to Sunderland is significant. Sunderland City Council Trading Standards Service, like most local authorities, is not able to provide the level of specialist resources necessary in order 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.

- 3.10 It is believed that a number of illegal money lenders are operating throughout the City however currently there is no intelligence to identify them. When marketing material about the IMLT becomes available in Sunderland it is expected to generate intelligence which will help identify the scope of the problem.

## **4.0 Current Position**

### **4.1.1 Key statistics for the Birmingham IMLT up to January 2011:**

Identified over **1,700** illegal lenders;  
Arrested over **500** illegal moneylenders (loan sharks);  
Written off over **£37 million** of illegal debts (money victims would have paid back to illegal lenders if the team had not acted);  
Brought over **182** prosecutions, resulting in prison sentences totalling over **107** years and one indefinite sentence;  
Helped over **16,000** victims of loan sharks including the most hard to reach individuals; and  
Referred over **600** victims to alternate (legal) sources of financial support.

- 4.1.2 In addition to exceeding the expectations of the Government the team has also achieved significant added value, including partnership working with the Police, the Department of Work and Pensions, Post Office Counter Fraud Unit and H M Revenue and Customs in order to facilitate a coordinated approach to tackling crime and disorder.

## **4.2 Objectives of the Project**

### **4.2.1 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.**

- 4.2.2 The evidence so far indicates that illegal moneylenders are widespread and prevalent nationally. 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.

- 4.2.3 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 seeking to set up businesses. Interest rates range from 100% up to 117,000% Annual Percentage Rate of interest in some instances.

- 4.2.4 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 moneylenders 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 seeking payment through sexual favours.
- 4.2.5 Moneylenders often use victims of money lending to assist them with maintaining their criminal lifestyle and anonymity; for example illegal moneylenders' vehicles are often registered at a client's address.
- 4.2.6 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.
- 4.2.7 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 activities, to identify them and, if possible, to 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.

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

- 4.3.1 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 shown that victims are willing to contact the IMLT and to provide information to help achieve prosecutions. Similar publicity would be disseminated in Sunderland and the Protocol addresses communications between Sunderland City Council and Birmingham City Council on press releases.
- 4.3.2 The team has used injunctions, backed by the power of arrest under the Anti-Social Behaviour Act 2003, to remove lenders from their areas 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.

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

- 4.4.1 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. Any marketing campaign undertaken by the IMLT in the Sunderland area will be funded by the IMLT.

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

- 4.5.1 The IMLT will help victims of illegal moneylenders with practical help and support 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. Consequently, face-to-face advice is considered the most helpful way forward and is the route normally adopted.

- 4.5.2 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 IMLT offers money management advice to all victims of moneylenders who contact them for assistance. Partnership working in this area is recognised as being essential in this area of service provision. This is the key role of a 'Financial Inclusions Partnership Officer' employed within the IMLT.

- 4.5.3 The City Council's vision of promoting credit union partnerships may be able to play a role in this area. Indeed, these two initiatives very much share similar objectives.

- 4.6 In order to expand the scheme into Sunderland, Birmingham City Council requires formal delegation of functions to carry out investigations under the Act and to prosecute any alleged offences discovered in this City.

- 4.7 In order to ensure clarity in respect of the operation of these arrangements, the Protocol sets out the processes and practices necessary to enable Birmingham City Council and its officers to undertake investigations and legal procedures and allows for Sunderland City Council to comment on the prosecution process undertaken by the IMLT within the Sunderland area. The Protocol sets out in detail amongst other things, the working arrangements for the IMLT within the Sunderland City Council area, referrals and sharing of information between Sunderland City Council and the IMLT, and the conduct and control of prosecutions by the IMLT.

- 4.8 This delegation does not prevent Sunderland Trading Standards from undertaking the function and the Protocol provides a right to Sunderland City Council to withdraw the delegation where Sunderland City Council considers it reasonable to do so.

## **5.0 Reasons for the Decision**

- 5.1 This proposal, if agreed, will add to the City Council's resources and will enable Sunderland Trading Standards to have access to a team of highly trained experts from the IMLT, if intelligence is received that illegal money lending is present in the Sunderland area.
- 5.2 This area of law enforcement requires specialist resource, expertise, techniques and facilities to which Sunderland Trading Standards would not otherwise have access. 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, former police officers and security services personnel.
- 5.3 The recommendations will support performance of the Council's duty in relation to enforcement of the provisions of the Consumer Credit Act 1974.

## **6.0 Alternative Options**

There are no other viable options as the funding is provided on the basis of expanding the Birmingham team.

## **7.0 Relevant Considerations/Options**

### **(a) Financial Implications/Sunderland Way of Working**

There are no financial implications as all funding for the project is provided by BIS. There are no implications for the Sunderland Way of Working.

### **(b) Risk Analysis**

The corporate risk management policy has been used to assess the level of risk. The risk to adopting this 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.

### **(d) Legal Implications**

Under section 222 of the Local Government Act 1972 'where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area.... (a) they may prosecute or defend or appear in any legal proceedings'. 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.

For Birmingham City Council to be able to carry out the function in Sunderland City Council's area, under Part III of the Consumer Credit



Act 1974, it is necessary for Cabinet as the executive to formally discharge and delegate this function to Birmingham City Council under Sections 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.

Any prosecutions under this delegation will be undertaken by Birmingham City Council with no liability for costs to Sunderland City Council.

The discharge by and delegation of this function to Birmingham City Council will not prevent Sunderland City Council from undertaking the function, where required and Sunderland City Council have a right to reasonably withdraw the delegation at any time.

**(j) Compatibility with European Convention on Human Rights**

The investigation of offences of illegal money lending may require the surveillance of individuals to gather evidence to prove the offence. This may at times infringe a person's Article 8 right to respect for his private and family life, his home and his correspondence. Interference with this right will only be undertaken where it is undertaken in accordance with the law and is necessary, in a democratic society, for the prevention of disorder or crime. This will be undertaken in accordance with the Regulation of Investigatory Powers Act 2000 and secondary legislation.

**(k) Reduction of Crime and Disorder – Community Cohesion / Social Inclusion**

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 loan sharks therefore supports the policy priorities associated with 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 many individuals and communities.

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

**(l) Equalities**

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.

**(m) Project Management Methodology**

The Project will be carried out in accordance with the Protocol.

**(o) Procurement**

There are no procurement implications. The project is funded by BIS until 2015.

**(p) Sustainability**

Any IMLT involvement in the Sunderland area will have a positive impact on a number of sustainability criteria. These include: Prosperous City, Healthy City, Attractive City and Safe City. There are no negative impacts anticipated.

**8.0 Glossary**

BIS – Department for Business, Innovation and Skills.

**9.0 List of Appendices**

None.

**10.0 Background Papers**

None.