

## **ILLEGAL MONEY LENDING UNIT –AUTHORISATION OF OFFICERS**

### **SUMMARY**

- 1.1 An Illegal Money Lending Unit for the East Midlands region has been set up in Nottingham. The Unit is staffed by Nottingham City Council officers who investigate complaints about 'loan sharks' and provide support to victims. Until the Council received a letter from Nottingham City Council dated 11 February 2008, it had previously been understood that the Council's Environmental Health and Trading Standards Division would retain the power to institute, prosecute and defend proceedings – effectively leaving the unit at Nottingham with an investigative mandate only in our area. Had this been the case, there would have been no constitutional considerations for the Council. However, it is now known that the intention is for the Unit also to be able to institute legal proceedings.
- 1.2 The powers in question are Executive functions of the Council. It is therefore important that officers working for the Unit are effectively authorised to carry out enforcement action in the city of Derby under the appropriate legislation
- 1.3 The report considers whether and how the Unit's officers should be authorised for this purpose. In that context, it should be noted that Derby City Council Trading Standards officers will retain their existing authority under the same legislation.
- 1.4 Subject to any issues raised at the meeting, I support the following recommendations.

### **RECOMMENDATION**

- 2.1 That by virtue of the powers provided by Regulation 7 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000, Cabinet delegate to Nottingham City Council's Executive the functions and powers listed below:
  - a) the discharge of the enforcement function and powers under the Consumer Credit Acts 1974 and 2006 and any legislation which amends or succeeds the same, including any secondary legislation made thereunder, in so far as it relates to illegal money lending for such cases and investigations as are agreed between the authorities.
  - b) In the exercise of the function listed at a) above, to carry out, in so far as the law allows, similar powers in respect of any associated offence which may become apparent under other legislation or at Common Law including, but not limited to:

- The Administration of Justice Act 1970
- The Business Names Act 1985
- The Consumer Credit Act 1974
- The Criminal Attempts Act 1981
- The Criminal Justice and Police Act 2001
- The Criminal Law Act 1977
- The Fraud Act 2006
- The Malicious Communications Act 1988
- Consumer Protection Act 1987
- The Offices Against the Person Act 1861
- The Theft Act 1968 and 1978
- The Proceeds of Crime Act 2002
- Perverting the Course of Justice
- False Imprisonment
- Kidnap
- Blackmail

- 2.2 That for the avoidance of doubt, Cabinet confirms that the delegation of these functions to Nottingham City Council's Executive does not in any way fetter the Council's discretion to investigate, instigate, prosecute or defend matters of a similar nature within its own administrative area under established constitutional arrangements.

<b>REASONS FOR RECOMMENDATION</b>
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- 3.1 The Illegal Money Lending Unit will operate in all local authority areas across the East Midlands region. Once authority is granted to Nottingham City Council officers, all decisions concerning the pursuance of investigations, decisions to prosecute and the laying of charges/informations relating to the conduct of those proceedings will be taken by Nottingham City Council. This will be confirmed in the agreement/protocol to be entered into between all the authorities concerned. To date, however, no draft document has been received.
- 3.2 Any costs incurred by, or ordered against, the Unit/Nottingham City Council in relation to any investigations, prosecutions or other proceedings arising therefrom will be borne entirely by Nottingham City Council. This is expected to be confirmed within the terms of an agreement/protocol to be agreed between all of the East Midlands signatory authorities.
- 3.3 It is understood that the majority of Trading Standards Departments have already agreed to this in principle. Clearly, all authorities need to enter into such an agreement on the same basis to ensure the work of the unit is effective.
- 3.4 The Unit will provide an enhanced service for Derby residents in terms of victim support and additional resources to tackle the increasingly widespread problem of loan-sharking.

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### **SUPPORTING INFORMATION**

- 1.1 Estimates suggest that as many as 10,000 households in the East Midlands are exploited by loan sharks every year. Victims are not only charged high interest rates, but very often are subject to violence, intimidation or blackmail, if they fall behind with payments. Families suffering in this area are usually of a low income (under £14,500 pa), council tenants or in rented accommodation, receiving benefits, of a lower educational standard. Single parents and people suffering from mental health problems are also common target groups. Such people may be unable to access even the simplest financial services, meaning that they pay more to manage their money, find it harder to plan for the future and cope with financial pressures, and are more vulnerable to financial distress and over-indebtedness.
- 1.2 Loan sharking is illegal and therefore a criminal offence, so if victims do owe money to a loan shark, they may not be legally obliged to pay back the loan.
- 1.3 As part of the Government's strategy to tackle financial exclusion, as set out in Financial Inclusion – The Way Forward (March 2007), the Secretary of State for BERR announced a crackdown on loan sharks and illegal money lending in the East Midlands last September. This has resulted in the setting up of a project team based in Nottingham to investigate complaints and provide support for victims. The team covers the whole of the East Midlands region, including Derby and was officially launched on 14 February 2008.
- 1.4 The Unit comprises investigators (Nottingham Trading Standards staff) supported by a partnership co-ordinator, intelligence officer and a police officer and works with voluntary groups and other financial inclusion projects such as Credit/Debt Advice Centres, Victim Support, Job Centre Plus, PCT Sure Start Children's Centres, Citizens Advice Bureau and Credit Unions to provide advice, sign posting, referrals and/or support to victims.
- 1.5 Information leaflets/posters are to be distributed throughout the city at a wide range of partner agencies including Police, NHS, PCT Sure Start, Derby Homes, Job Centre Plus, Credit Unions, Social Services –Welfare/Benefits, Local Magistrates/Crown Court, Victim Support, Witness Service, Crime and Drugs Partnership, CAB, Age Concern, Colleges, Derby University, community centres plus voluntary agencies.

## OTHER OPTIONS CONSIDERED

- 2.1 None. Whilst Derby City Council Trading Standards Officers will retain their authority to investigate illegal money lending and prosecute offenders, as appropriate, independently of the Unit, existing resources would not permit a level of service comparable to that on offer from the Unit. The establishment of the Unit therefore represents an improved service for Derby residents, whilst not undermining the authority of the council's Environmental Health and Trading Standards Division.

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Appendix 1 – Implications

<b>IMPLICATIONS</b>
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**Financial**

- 1.1 None. The Unit is being funded for the next 3 years directly by BERR

**Legal**

- 2.1 Section 101(1A) of the Local Government Act 1972 prohibits the delegation of functions of a local authority to another local authority if that function is also a function of the other local authority and is the responsibility of that authority's Executive.
- 2.2 However, Section 19 of the Local Government Act 2000 (LGA 2000) enables the Secretary of State to make regulations enabling an Executive of a local authority to arrange, inter alia, for the discharge of any functions which are their responsibility by either another local authority or an Executive of another local authority.
- 2.3 The Secretary of State has made the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (the 2000 Regulations). It enables the Executive to make arrangements for the discharge of its functions by an area committee, another local authority or another local authority Executive. Regulation 7 of the 2000 Regulations enables the discharge of a function which is the responsibility of the Executive of a local authority to be discharged by either another local authority or an Executive of another local authority.
- 2.4 Regulation 7(3) provides that if the function to be delegated is the responsibility of the Executive of the delegating authority and also the responsibility of the Executive of the receiving authority, the function may only be delegated to the Executive of the receiving authority. In such circumstances, Regulation 9 of the 2000 Regulations brings Section 15 of the LGA 2000 into effect
- 2.5 Section 15 of the LGA 2000 provides that Executive functions may be discharged by the Executive, any member of the Executive, any committee of the Executive and any officers of the authority delegated for the purpose.
- 2.6 It is understood, and therefore expected, that if Cabinet acts on the recommendations and delegates the functions referred to to Nottingham City Council's Executive, Nottingham City Council's Executive will delegate the power to undertake its functions to officers of the Unit by virtue of Section 15(3) of the LGA 2000.

**Personnel**

- 3 None

## **Equalities Impact**

- 4 The service is potentially of greatest value to certain vulnerable groups e.g. people on low incomes, those of a lower educational standard, single parents and people with mental health problems

## **Corporate Priorities**

- 5 The issue falls within the corporate priority of:

**Giving you excellent services and value for money.**