



Leicester
City Council

WARDS AFFECTED
All Wards

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:
Cabinet

12 May 2008

**Illegal Money Lending and Delegation of Powers
to Nottingham City Council**

Report of the Corporate Director (Regeneration and Culture)

1. Purpose of the Report

- 1.1 To approve the delegation of enforcement and prosecution powers to Nottingham City Council to enable the East Midlands Public Protection Project Team (PPPT) to undertake investigations into illegal money lending in the Leicester City area and take appropriate enforcement actions.

2. Recommendations

Cabinet are recommended to:

- 2.1 Delegate to the Executive of Nottingham City Council 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 there under in so far as they relate to illegal money lending in Leicester City and for such cases and investigations as are agreed between the Authorities.
- 2.2 Delegate to the Executive of Nottingham City Council, for the exercise of this function and in so far as the law allows, 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
 - Offences Against the Person Act 1861
 - Theft Act 1968 and 1978
 - Proceeds of Crime Act 2002

- Perverting the course of justice
 - False imprisonment
 - Kidnap
 - Blackmail
- 2.3 To authorise the Corporate Director (Regeneration and Culture) to sign the Protocol subject to the Service Director, Legal Services, being satisfied as to its contents.
- 2.4 To authorise the Corporate Director (Regeneration and Culture) to agree any amendments to the Protocol in the light of how the project develops, subject to consultation with the Cabinet lead.

3. Introduction

- 3.1 Money lending in the UK is subject to statutory requirements and compliance is controlled by the Financial Services Authority, the Office of Fair Trading and also by local authorities through their trading standards services. The statutory requirements apply to the whole business process from advertising, canvassing of loans, information provision, loan settlement and debt collection. The price of loans – the interest rates – while not subject to any statutory interest ceilings must not be extortionate and are challengeable in courts.
- 3.2 Money lenders must be licensed by one of the authorising bodies before they can trade and a license can be refused or subsequently removed if they are found to be unfit to work in this sector, for example, because they have convictions for fraud or assault.
- 3.3 Government funded pilot illegal money lending units in Birmingham and Glasgow have confirmed the existence of money lenders who are unlicensed and engaged in unfair conduct including the charging of extortionate rates of interest and using intimidation and violence to recover loans.
- 3.4 The Government estimates that as many as 10,000 households in the East Midlands are exploited by loan sharks every year and believes that many of these will be located in the cities of Leicester, Derby and Nottingham.

4. Illegal Money Lending Pilots

- 4.1 The illegal money lending pilot was set up in autumn 2004 in response to the 2001 Labour election manifesto commitment to tackle illegal money lending. Under the pilot, DTI funded two better-resourced and dedicated teams based in the Trading Standards Services (which have responsibility for enforcement against unlicensed lenders) in Glasgow City Council and Birmingham City Council, primarily to investigate offences of illegal money lending.
- 4.2 The work of the two illegal lending teams made a huge contribution to raising awareness of the nature and impact of illegal lending; understanding how best to tackle the problem; knowing where there are likely to be concentrations of illegal lending; and understanding the need to provide victims of loan sharks with help to access affordable credit and other sources of support.
- 4.3 Illegal moneylenders operate primarily in urban areas with high proportions of rented accommodation. They tend to target the most vulnerable in society,

such as single mothers in receipt of benefits, people with drug dependency and people with mental health issues, although the profile of victims varies widely. Illegal lenders often impose penalty charges for missed payments and “top up” loans, with the result that borrowers do not know how much they need to repay nor for how long. Some loan sharks draw their victims into a criminal lifestyle if they are unable to pay their debts, for example receiving stolen goods, shop-lifting, providing false alibis and even prostitution. Investigations into illegal money lending have also uncovered offences relating to benefit and mortgage fraud, blackmail, drugs, firearms and counterfeit goods.

4.4 The evaluation of the pilots showed that the pilot teams had a clear impact in identifying cases of illegal money lending, instituting proceedings against illegal money lenders, and securing prosecutions (with others expected to follow). The teams liaised closely with the police and relevant departments, and there is some evidence that their work led to a reduction in petty crime in areas where a loan shark has been removed. Where illegal lenders were the teams helped to replace the lender with appropriate money advice and signposting to other sources of credit.

4.5 Quantifiable successes included:

- identification of almost 250 illegal lenders
- recovery of £2 million
- 1765 victims being protected and an estimated £3.3 million in outstanding payments being cancelled
- proceedings instituted against 58 individuals
- 230 hours community service and rehabilitation orders of 24 months
- longest prison sentence to date is 6 years 9 months for a loan shark also charged with kidnapping, assault, wounding, blackmail and counterfeiting.

4.6 The evaluation of the pilots concluded that the most effective strategy for tackling illegal lending is to balance enforcement with alternative credit supply in the context of wider efforts to tackle financial exclusion.

5. East Midlands Public Protection Project Team

5.1 In January 2007 the Government announced the funding of a network of regional Illegal Money Lending Units to tackle illegal money lending directly and to facilitate access to alternative sources of information, advice and finance. The Government envisaged these Units being delivered by local government and working in close with Trading Standards Services and partners.

5.2 Trading Standards East Midlands (TSEM) is the partnership of all eight trading standards authorities in the East Midlands region and have common priorities as regards promoting community safety and tackling crime and disorder. TSEM successfully bid for Government funding to establish and manage a regional illegal money lending unit.

5.3 In the absence of any suitable regional local government institutional vehicle, Nottingham City Council volunteered to host the East Midlands Public Protection Project Team (PPPT) and received the support of all the Heads of Trading Standards in the East Midlands. Nottingham City Council is regarded

as well placed to host the PPPT because the Trading Standards Service has had significant recent experience of dealing with illegal money lending and there is councillor and senior management commitment to establish and manage such a Unit.

5.4 East Midlands local authorities have a positive track record of co-operation on regional trading standards project. Lincolnshire County Council host the Consumer Direct East Midlands telephone advice centre. Leicester City Council host the East Midlands Regional Intelligence Unit.

5.5 Nottingham City Council completed recruitment of the staff of the Illegal Money Lending Unit in late November 2007. The team of four investigators is supported by a partnership coordinator, intelligence officer and seconded police officers that give the team access to the full range of police powers with the ability to arrest offenders on the spot.

5.6 On 18 December 2007 'hotlines' were simultaneously launched in Leicester, Derby and Nottingham. The Leicester hotline number is 0116 217 9550. It is staffed 24 hours a day, 7 days a week, and 365 days a year. All calls are treated as completely confidential.

5.7 The team are currently building up working relationships 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.

5.8 The PPPT have already identified a number of potential targets and expect to identify more in due course. No action has been taken as Nottingham City Council is awaiting delegation of powers from partner local authorities in order to enable it to authorise the officers of the PPPT to proceed with investigations in the East Midlands area.

5.9 Tackling illegal money lending is part of the financial and social exclusion agenda. In order to meet the financial inclusion objectives and to replace illegal money lenders with access to legitimate credit, the PPPT will be building strong links with Credit Unions, especially those receiving Growth Fund funding, and will look to raise awareness of the issues around illegal lending amongst third sector lenders. The PPPT will be looking to establish links with the Facilitating Access Campaign - "Now Let's Talk Money" - and its stakeholder managers. Other contacts that will be explored include the DWP and Social Fund, as well as local money advisers.



5.10 In order to ensure that victims receive support appropriate to their individual needs, the PPPT will be engaging with a range of agencies. Some victims will require help in accessing wider, non-financial, sources of support, such as lifestyle counselling. Others will require help following their involvement in a case, for example moving to a safe house or receiving counselling. Again, victims will be referred to the sources of advice most appropriate to their needs and those referrals recorded, and monitored for impact.

6. Delegation of Powers

6.1 The Consumer Credit Acts 1974, 2006 and associated legislation place duties on local authorities to enforce the provisions on those acts in their area and enable them to authorise their officers to utilise certain powers such as powers of entry to commercial premises, power to access and seize documentation, to undertake surveillance, to apply for warrants.

6.2 The duties of a local authority, and the officer powers that flow from them, are generally confined to tackling legislative breaches occurring in the geographical area. An officer of one local authority is not able to investigate a legislative breach that occurs in another local authority area.

6.3 Therefore, in order to benefit from this new consumer protection resource Leicester City Council, on the advice of Legal Services, must delegate the enforcement function to Nottingham City Council. This delegation will enable Nottingham City Council to authorise PPPT staff to undertake investigations in Leicester City and to commence associated legal proceedings including prosecution of offenders.

7. The Protocol and operational arrangements

7.1 The intended operational arrangements between NCC and LCC are documented in the Public Protection Project Protocol (see Appendix A) and, subject to the agreement of the Service Director Legal Services, the Protocol will be signed by the Corporate Director (Regeneration and Culture). From time to time, changes may be necessary to the Protocol. These will be agreed by the Corporate Director (Regeneration and Culture) following consultation with the Cabinet lead.

7.2 The Protocol contains the following key provisions:

- NCC will be liable for the competence and actions of all persons employed within the PPPT.
- NCC will brief LCC on any operations underway and their conclusion
- NCC and LCC may agree for LCC officers to be transferred to work in the PPPT
- LCC may withdraw the delegation at any time but not unreasonably
- LCC will appoint a Contact Officer
- LCC will assist the PPPT with information and intelligence
- LCC will indemnify NCC for any losses arising out of the improper or unlawful delegation of power by LCC

7.3 Leicester City Trading Standards will assist in investigations and, by agreement, investigations may be transferred to and from Leicester City Trading Standards Service for further action including legal proceedings.

- 7.4 Nottingham City Council and the PPPT will adhere to statutory codes of practice including those relating to the use of regulatory powers, surveillance and information processing and disclosure.
- 7.5 The Manager of the PPPT is a member of the TSEM Regional Tactical Tasking and Co-ordination Group (TSEM RTTCG) on which Leicester City Council is represented. The TSEM RTTCG will provide an additional oversight mechanism of any cross-authority operational activity in the area of illegal money lending.
- 7.6 The Head of Business Regulation recommends that Cabinet approve the recommendations as set out in paragraph 2.**

8. Financial Implications

- 8.1 Nottingham City Council are hosting the ILMU and are responsible for its financial management.
- 8.2 Funding for the East Midlands Illegal Money Lending Unit is being provided from the Government's Financial Inclusion Fund and will continue up to March 2011.
- 8.3 The funding agreement between Nottingham City Council and HM Treasury covers all the running costs of the ILMU and provisions to cover the costs of expected legal proceedings and no additional resources are required from Leicester City Council.
- 8.4 Leicester City Council have agreed to indemnify Nottingham City Council in respect of any claims which may arise should the granting of the delegated power to undertake investigations within Leicester City Council's boundaries ever be determined to have been improper or unlawful.

Martin Judson, Head of Finance, x297390

9. Legal Implications

- 9.1 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 an executive of another local authority. The arrangements are set out in the Local Authorities (Arrangements for Discharge of Function) (England) Regulations 2000.
- 9.2 The enforcement Powers contained in the various consumer credit acts and associated legislation is an Executive Function and therefore any decision for its delegation is to be undertaken under section 7 of the Local Government Act 2000 and regulations 7 and 9 of the Local Authorities (Arrangements for Discharge of Function) (England) Regulations 2000.
- 9.3 The enforcement Powers under the various consumer credit acts and associated legislation is an Executive Function and requires Cabinet approval for its delegation to another local authority.
- 9.4 Delegation of the enforcement Powers in respect of illegal money lending is necessary from Leicester City Council to Nottingham City Council is necessary in order to enable Nottingham City to properly authorise its

employees to undertake investigations, including surveillance, in the area of Leicester City and to commence legal actions against identified offenders and their assets.

Anthony Cross, Head of Litigation, x296362

10. Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph References within this report
Raising Standards	NO	
Equal Opportunities	NO	
Policy	NO	
Sustainable and Environmental	NO	
Crime and Disorder	YES	4.5, 5.2
Human Rights Act	YES	6.3 Nottingham City Council as a public body complies with HRA, DPA, RIPA.
Elderly/People on Low Income	YES	4.3

RISK ASSESSMENT MATRIX

Risk	Likelihood L/M/H	Severity Impact L/M/H	Control Actions (if necessary/or appropriate)
Breaches of investigation confidentiality	L	M	PPPT reports on current investigations restricted to regional TTCG
Threats to health & safety of victims and officers	M	H	Assured confidentiality for complainants and data; Single Points of Contact between local authority and PPPT; secure liaison with police and other law enforcement agencies through PPPT Intelligence Officer Regional Intelligence Manager; documented protocols.
Inappropriate use of investigatory powers in Leicester	L	L	Recruitment of suitably qualified and trained staff and managers; specialist legal advice available.
Disproportionate use of statutory sanctions against Leicester based offenders	L	M	Application of the Regulators Compliance Code and Prosecutors Code.

L - Low
M - Medium
H - High

L - Low
M - Medium
H - High

11. Background Papers – Local Government Act 1972

HM Treasury, Financial inclusion: an action plan for 2008-11, December 2007
Legal Services file reference 67821 containing, in part, exempt information

12. Consultation

Heads of Trading Standards for Leicestershire County Council,
Northamptonshire County Council, Derbyshire County Council, Lincolnshire
County Council, Nottingham City Council and Derby City Council.

13. Report Author/Officer to contact:

Roman Leszczyszyn
Head of Business Regulation
Leszr001@leicester.gov.uk
0116 252 6590

Key Decision	No
Reason	N/A
Appeared in Forward Plan	N/A
Executive or Council Decision	Executive

Appendix A

DEPARTMENT OF BUSINESS ENTERPRISE AND REGULATORY REFORM (BERR)

PUBLIC PROTECTION PROJECT PROTOCOL

This Protocol is made the day of 2008 between **Nottingham City Council** of The Guildhall, Nottingham, NG1 4BT and **Leicester City Council** of New Walk Centre, Welford Place, Leicester, LE1 6ZG.

INTERPRETATION

For the purposes of this Protocol the following words or phrases shall have the following meaning:

“Appropriate Contact Officer” the Head or Manager of Leicester Trading Standards, Nottingham Trading Standards or any person authorised by them

“Commencement Date” the date the Delegated Power is granted by LEICESTER CITY COUNCIL

“Delegated Power” The power granted to NOTTINGHAM CITY COUNCIL by LEICESTER CITY COUNCIL in pursuance of Regulation 7 of the Local Authorities (Arrangements for Discharge of Functions) (England) Regulations 2000, and/or section 19 of the Local Government Act 2000, evidence of which is contained in the Schedule to this Protocol in relation to the following:-

(1) The discharge of the enforcement function and powers under the Consumer Credit Acts 1974 and 2006 and any legislation which amends, extends or succeeds the same, (including any secondary legislation made thereunder,) in so far as they relate to illegal money lending for such cases and investigations as are agreed between NOTTINGHAM CITY COUNCIL and LEICESTER CITY COUNCIL.

(2) In the exercise of the function listed at 1 above the carrying out, (in so far as the law allows,) of similar enforcement and investigatory 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 Offences 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

“NCC”	Nottingham City Council
“Nottingham Trading Standards”	the Trading Standards Division of NCC
“PPPT”	the Public Protection Project Team
“the Project”	the Public Protection Project
“Term”	[] from the Commencement Date
“TSEM”	Trading Standards East Midlands
“LCC”	Leicester City Council
“Local Contact Officer (LCO)”	the relevant person appointed by the Head of Business Regulation, Leicester City Council, to liaise with the PPPT Manager on matters relating to and in connection with the Project
“Leicester Trading Standards”	means the Trading Standards Service of LCC

1. APPLICATION AND BACKGROUND

1.1 This Protocol applies to the Project funded by the Department of Business Enterprise and Regulatory Reform (BERR) and covers the following issues:

- The conduct of investigations and associated working practices for PPPT officers when conducting investigations or operating in the City of Leicester.
- The mechanisms where Leicester Trading Standards is updated on the progress of the project and any significant issue relating thereto.
- The exchange of intelligence and information between the PPPT and Leicester Trading Standards.
- The institution of legal proceedings.

1.2 The purpose of this protocol is to facilitate the delegation of powers to officers employed within NCC’s PPPT to enforce the provisions of the Consumer Credit Acts 1974 and 2006 within the area of Leicester City. The protocol encourages the exchange of information and a working partnership approach

between NCC and LCC in relation to the Consumer Credit Acts 1974 and 2006.

- 1.3 This Protocol will come into force on the Commencement Date and terminates at the end of the Term, or upon the withdrawal of the delegated power in accordance with paragraph 1.4 below. Alternatively the Protocol may be terminated by either party giving 3 months written notice.
- 1.4 Notwithstanding the terms and conditions of this Protocol, this Protocol does not prejudice the right of LCC to withdraw the Delegated Power at any time during the Term. However LCC undertakes not to withdraw the Delegated Power unreasonably.

2. THE PPPT

- 2.1 It is recognised that officers in the PPPT will need authority to initiate and/or undertake investigations and/or the prosecution of potential offences falling within the scope of the Project where such potential offences fall entirely outside of the NCC boundaries. The Delegated Power provides such authority.
- 2.2 LCC hereby confirms that the Delegated Power has been granted and authorised within the terms of its constitution and agrees to indemnify NCC in respect of any claims which may arise should the granting of the Delegated Power ever be determined to have been improper or unlawful.
- 2.3 It is recognised that following the grant of the Delegated Power all decisions concerning the investigations agreed under it (including decisions to prosecute and the laying of charges and/or informations,) shall be taken by NCC in accordance with the relevant Code for Crown Prosecutors and NCC's Enforcement Policy.

3. WORKING ARRANGEMENTS IN THE LEICESTER CITY COUNCIL AREA

- 3.1 LCC will designate and appoint a Local Contact Officer (LCO).
- 3.2 The PPPT manager will at any time the PPPT team manager considers necessary and prudent, and at the request of the LCO (where the PPPT manager considers it appropriate), brief the LCO on any intelligence gathered, any progress made on investigations and/or prosecutions pending or otherwise, which relates to or affects LCC, its area and/or its residents .
- 3.3 The PPPT team manager will as soon as reasonably practicable inform the LCO of the outcome of any concluded prosecution proceedings relating to LCC's area.
- 3.4 Where the PPPT team manager and the Head of Business Regulation, LCC, Leicester City Council, agree that an officer of Leicester Trading Standards will be actively involved in an investigation, that officer will remain an employee of LCC but for the purpose of that investigation, will be placed under the control and direction of the PPPT team manager. Such agreement will be subject to the PPPT team manager being satisfied that the officer's participation will not compromise any investigation or endanger any member of the PPPT, supporting staff or witnesses, that the officer has the appropriate

training and experience to undertake the task; and upon any other terms that the PPPT team manager and the Head of Business Regulation, Leicester City Council, consider necessary and/or appropriate.

- 3.5 Unless there is prior agreement with the PPPT team manager no reimbursement will be made by NCC or the PPPT for time spent by any LCC officer on activities supporting the Project or any expenditure incurred by them.

4. REFERRAL OF INFORMATION/INTELLIGENCE TO THE PROJECT TEAM

- 4.1 It is recognised that the PPPT will rely on receiving information about illegal money lending activities.

- 4.2 LCC will endeavour to provide as much relevant information and intelligence as reasonably and practicably possible to the PPPT concerning any investigation being carried out within the City/County of Leicester having regard to any statutory limitations/restrictions, the time likely to be expended, resources available and costs likely to be incurred by LCC in providing the same.

- 4.3 Information and intelligence will be provided by the LCO to the PPPT team manager or other person designated by the PPPT team manager to receive it.

- 4.4 The PPPT may not, as a matter of routine, agree to investigate individual complaints received concerning alleged illegal money lending activities. However, such complaints may be used by the PPPT as a source of intelligence.

- 4.5 NCC, PPPT and LCC agree:

- a) To process Personal Data and information fairly and lawfully;
- b) To keep the personal data confidential at all times and ensure it is used only for the purpose intended.
- c) The personal data held will be secured and disclosed solely for the purposes of the Project. The data must and will not be used for any other purpose.
- d) Any requests, other than for the purposes of the Project for disclosure of data held will be made in compliance with the Data Protection Act 1998.
- e) Personal Data shall only be accessed or disclosed by or to Authorised Persons.

5. CONDUCT AND CONTROL OF INVESTIGATIONS

- 5.1 The conduct and control of all agreed investigations arising from the City of Leicester and any resulting prosecutions by the PPPT will be the responsibility of NCC. Investigations will be undertaken in line with the NCC's Enforcement Policy and subject to the policies and procedures approved and adopted by Nottingham Trading Standards.

- 5.2 NCC will be responsible for all aspects of the investigations and responsibilities under the Regulation of Investigatory Powers Act 2000 and the Data Protection Act 1998.
- 5.3 NCC will be solely responsible for the Health and Safety of PPPT officers and any other officer or person within the direct management of the PPPT providing support and assistance in any investigation undertaken by the PPPT.
- 5.4 It is intended that legal services associated with the works of the PPPT will be provided by or commissioned through the Legal Services Division of the Resources Department of NCC. The costs of those services shall be met in the first instance by the PPPT and any costs recovered as a result of legal proceedings (either civil or criminal) shall remain the property of NCC.

6. RESPONSIBILITIES AND ACTIONS OF THE AUTHORITIES

- 6.1 NCC shall be liable for the actions and competence of the persons employed within the PPPT and shall ensure that the PPPT 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.
- 6.2 LCC 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.
- 6.3 Information/intelligence provided between NCC and LCC shall be used for the purpose intended and shall not be divulged to third parties unless to do so would be lawful and in pursuance of an investigation/enquiry subject to this protocol.

SCHEDULE

(Attach copy of minute/portfolio holder decision granting the delegated power)

Date of Commencement

Agreement

We the under signed agree to work within the terms of this protocol.

Name: (print) Position.....

Signature..... Date:

On behalf of Nottingham City Council

Name: (print) Position.....

Signature..... Date:

On behalf of Leicester City Council