

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

PROTOCOL FOR ENGLAND ILLEGAL MONEY LENDING SECTION
INVESTIGATIONS

Interpretation

For the purposes of this Protocol –

“**BCC**” means Birmingham City Council

“**WSCC**” means West Sussex County Council Trading Standards

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

“**Delegated Power**” means the discharge of the function of the Enforcement of the Consumer Credit Act 1974, the enabling provisions within the Financial Services Act 2012 in respect of matters concerned with the Financial Services and Markets Act 2000 granted to BCC by WCC 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 2012, 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 2018

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

“**Contact Officer (WSCCCO)**” means the relevant person appointed by the Head of Trading Standards of WSCC 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 / NTSB / 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 WSCC
- The mechanisms whereby WSCC is updated on the progress of the project and any significant issue relating thereto.
- The exchange of intelligence and information between the IMLS and WSCC
- 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, to include matters in respect of the Financial Services and Markets Act 2000 within the area of West Sussex County Council. The protocol encourages the exchange of information and a working partnership approach between BCC and WSCC 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 WSCC to withdraw the Delegated Power at any time during the Term. However WSCC 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 WSCC.

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 WSCC 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 West Sussex.
- 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 WSCC, 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 West Sussex County Council Area

- 4.1 WSCC will designate and appoint a Council Contact Officer (WSCCCO).
- 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 WSCCCO, brief the WSCCCO on any intelligence gathered, any progress made on investigations and/or prosecutions pending or otherwise, relating to or affecting West Sussex 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 WSCCCO updated on the progress of investigations and enquiries being carried out in West Sussex 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 WSCCCO.
- 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 WSCCCO 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 WSCCCO 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 WSCCCO of the outcome of any concluded prosecution proceedings conducted within West Sussex.
- 4.6 BCC, where possible, will consult with WSCC 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 WSCCCO in advance. Upon being notified of an intention to contact such a body, WSCC may arrange for one of its 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 WSCC agree that an officer or officers of WSCC will be actively involved in an investigation, that officer will remain an employee of WSCC 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 WSCC 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 WSCC officer.
- 4.10 The exercise by BCC of these arrangements shall be at no cost to WSCC
- 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 WSCC 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 WSCC having regard to any statutory limitations/restrictions.
- 5.3 Information and intelligence will be provided by the WSCCCO 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 WSCC 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 WSCC 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, WSCC 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 WSCC ought reasonably to be aware of. WSCC 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 WSCC 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 WSCC 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 WSCC 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: XXXX 2015

Signed

Lee Neale
Director of Public Protection and Deputy Chief Fire Officer
West Sussex County Council

Signed

Jacqui Kennedy
Director of Regulation and Enforcement
Birmingham City Council.