

COUNCIL:

25 SEPTEMBER 2014

CABINET PROPOSAL

AGENDA ITEM: 15

REGULATORY COMMERCIAL SERVICES DELEGATIONS

Reason for this Report

1. To allow the Council to consider the arrangements necessary for the effective discharge of consumer protection and illegal money lending functions and to approve the necessary delegations.

Background

2. In December 2007, the former Executive considered a report on arrangements with other local authorities for the discharge of consumer protection and illegal money lending functions, allowing City of Cardiff Council to carry out investigation and prosecution functions on behalf of other local authorities, and vice versa, where deemed appropriate. The delegations that were approved by Executive at that time require updating to reflect the Council's current organisational arrangements.

Issues

Trading Standards investigations and prosecutions

3. As the scale of consumer frauds increases, officers from Cardiff Trading Standards have been involved in investigations that reveal breaches of consumer protection law, not only in Cardiff, but also in other parts of Great Britain. These cross border investigations require inter authority arrangements to challenge the malpractices in the Courts.
4. The power to prosecute offences in Cardiff lies with the City of Cardiff Council. Authority to prosecute offences for infringements of consumer protection legislation in Cardiff has been delegated to the Assistant Director for Environment and the Operational Manager – Regulatory Commercial Services in consultation with the Head of Legal Services.
5. However, when investigations reveal offences committed outside the geographical boundaries of Cardiff, agreement must be obtained with the local authority where the offences took place, in order to undertake the prosecution role on their behalf. Conversely, investigations may reveal

that certain offenses, which may have been committed within Cardiff, may be more appropriately prosecuted by another local authority together with offences committed within their area. This has a number of advantages in that it prevents duplication of effort and allows a Court to understand the true scope of a rogue trader's activities. Formal agreements must be entered into with any other local authorities concerned to ensure that the prosecuting authority is legally empowered to prosecute on behalf of the other authority.

Illegal Money Lending

6. In July 2007, the Executive approved a bid to operate an Illegal Money Lending Unit (IMLU) on behalf of the other Welsh Councils. This initiative offers trading standards services in Wales the opportunity to tackle illegal money lending. In turn, this has a positive effect on the quality of life of the people of Wales. The initiative links clearly to the corporate aims of City of Cardiff Council, and many other Councils in Wales. City of Cardiff Council has hosted the initiative on behalf of all Welsh Council's since the success of the initial bid.
7. Illegal money lending covers a range of activities, from persons that are actually licensed to lend money, but are acting unlawfully (for example by canvassing off trade premises) to the extreme actions of a person offering cash loans without being licensed at all (Loan Sharks). The primary legislation governing the consumer credit industry is the Consumer Credit Act 1974 and the Trading Standards Service enforces this, in each Local Authority area.
8. In order to operate the Illegal Money Lending Scheme in Wales, proper authorisation of the officers to carry out the investigations and for all the associated legal processes needs to be delegated to Cardiff by the other Councils in Wales. Annual agreements are sought with the other Welsh authorities for this purpose. Such agreements are required to eliminate the opportunity for a successful defence on a technical issue relating to jurisdiction.
9. The Executive delegations approved in December 2007 in respect of both consumer protection and illegal money lending functions were granted to posts which no longer exist under the Council's current management structure.
10. This report therefore requests new delegations to the Assistant Director of Environment and/or the Operational Manager Regulatory Commercial Services to enter into agreements with other local authorities in relation to:
 - Trading Standards investigations and prosecutions; and
 - Investigating and instituting proceedings against illegal money lenders,

to allow City of Cardiff Council to carry out investigation and prosecution functions on behalf of another local authority and vice versa, as appropriate.

11. As certain consumer protection function (such as food safety standards and animal welfare) fall within the responsibility of the Public Protection Committee, a separate report will be submitted to that Committee in respect of those functions.
12. Any decision to accept a delegation of functions from another local authority or its executive must be approved by full Council, so the recommendations in this respect are subject to the approval of Council.

Reason for Recommendations

13. To update the delegations necessary for the effective discharge of trading standards and illegal money lending functions.

Financial Implications

14. The funding for the IMLU project in Cardiff is via a specific grant from the Department for Business Innovation & Skill (BIS). Bids are submitted annually.
15. This report recommends that the Council continues to enter into agreements with other Welsh local authorities for the delegation of their functions of the enforcement of Part III of the Consumer Credit Act in their area, to City of Cardiff Council, as operators of the Illegal Money Lending Unit. Under such agreements, it is proposed that the Council will continue to provide appropriate indemnities to the other Council(s) involved against any fees, expenses or liabilities incurred. Accordingly any awards made by the Court towards investigations/legal costs will be retained by Cardiff. It is assumed that as a grant funded project, any award of recovered costs will be reinvested within the IMLU project.
16. It is not anticipated that the recommendations will result in any additional costs being borne by the Council.

Legal Implications

17. Under the Local Government Act 2000, section 19, and Regulations made thereunder, the Cabinet is empowered to make arrangements to delegate an executive function to another local authority or its executive (depending on the status of the function in the other local authority), but only the Council can decide to accept a delegation of functions from another local authority (Constitution Article 10.3, and WAG Statutory Guidance on Executive Arrangements 2006, paragraphs 4.102 to 4.107). Recommendations 1 and 2 of this report are therefore subject to the approval of full Council.

18. Where arrangements are in place for the Cabinet to discharge functions of another local authority (or its executive), the Cabinet may arrange for the discharge of any of those functions by a committee or officer of theirs. Recommendation 3 of this report is therefore legally permissible.
19. Where the Cabinet chooses to delegate functions to another local authority or its executive, the Cabinet will nevertheless remain responsible to the Council, through its scrutiny committees, for those functions. In addition, the discharge of the delegated functions by the other authority must be exercised in accordance with the policy framework set by full Council.
20. In deciding to delegate a function to another authority (or its executive), Statutory Guidance on Executive Arrangements issued by WAG (SI 2006/56) advises that the Cabinet must be clear that doing so does not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions.

RECOMMENDATIONS

Council is recommended to

- 1) delegate authority to the Assistant Director of Environment and or the Operational Manager- Regulatory Commercial Services, in consultation with the City and County Solicitor, to enter into legal agreements with other local authorities, as and when it is appropriate and in the interests of the proper and efficient discharge of the Council's Consumer Protection functions and where those functions are Executive functions, to:
 - (i) delegate the discharge of any such consumer protection functions to another local authority or its executive as appropriate, and or
 - (ii) arrange for City of Cardiff Council to discharge any consumer protection functions of the other authority,
- 2) delegate authority to the Assistant Director of Environment and or the Operational Manager- Regulatory Commercial Services, in consultation with the City and County Solicitor, to enter into legal agreements with other Welsh local authorities, as and when it is appropriate and in the interests of the proper and efficient discharge of the Council's illegal money lending functions, and where those functions are Executive functions, to arrange for City of Cardiff Council's Illegal Money Lending Unit to discharge the illegal money lending functions of the other authority or authorities

- 3) delegate authority to the Assistant Director of Environment and or the Operational Manager Regulatory Commercial Services, to take any necessary action, including the institution of legal proceedings, in respect of consumer protection and illegal money lending functions (where those functions are executive functions) being discharged by City of Cardiff Council pursuant to agreements concluded under the powers delegated under recommendations 1 or 2 above, subject to consultation with the City and County Solicitor.

THE CABINET

18 September 2014

The following background papers have been taken into account

Executive report 'Illegal Money Lending', 5 July 2007

Executive report 'Consumer Protection Delegations', 6 December 2007

Public Protection Committee report, 'Consumer Protection Delegations', 4 December 2007