

Decision Maker: EXECUTIVE
(For pre-decision scrutiny by the Public Protection and Enforcement PDS Committee)

Date: PPE PDS: 22nd June 2021
Executive: 30th June 2021

Decision Type: Non-Urgent Executive Key

Title: Delegation of Function

Contact Officer: Rob Vale, Head of Service, Trading Standards & Commercial Regulation
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Chief Officer: Colin Brand, Director of Environment and Public Protection

Ward: (All Wards);

1. Reason for report

The report relates to two current Trading Standards investigations that are proceeding to prosecution, and require cross boundary authorisations from other local authorities, and acceptance will also have a bearing on ongoing and future cases.

Where the Executive function from other authorities is required, this needs to be formally accepted by the Executive of this Council. On 19th April 2021, Full Council agreed an amendment to the constitution to clarify that for executive functions the decision sits with the Leader and for other functions with the Council; however, to comply with correct governance, this decision first needs to be approved by the Portfolio Holder for Public Protection and Enforcement (following pre-decision scrutiny by the Public Protection and Enforcement PDS) prior to it being recommended by the Executive on the 30th June 2021.

2. **RECOMMENDATION(S)**

That the PPE PDS Committee is asked to:

2.1 **Note the contents of the report.**

The Portfolio Holder for Public Protection and Enforcement is asked to:

- 2.2 Recommend that the delegation of function from other local authorities (listed in Appendix 1) for adoption be accepted by the Executive on the 30th June 2021.**

The Executive is asked to agree:

- 2.3 That the delegation of functions from other local authorities (listed in Appendix A) for adoption for the purpose of legal proceedings be accepted by the Executive;**
- 2.4 And delegate the authority to the Director of Environment and Public Protection to accept delegation of function from other local authorities in relation to this matter.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: Trading Standards' investigations regularly relate to vulnerable groups, in Bromley and elsewhere, particularly those vulnerable by virtue of age and/or credulity who can be adversely impacted, both financially and emotionally, by the actions of unscrupulous businesses.
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Corporate Policy

1. Policy Status: Not Applicable
 2. BBB Priority: Excellent Council Safe Bromley Supporting Independence Healthy Bromley
Regeneration
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Financial

1. Cost of proposal: NA
 2. Ongoing costs: NA
 3. Budget head/performance centre: NA
 4. Total current budget for this head: NA
 5. Source of funding: NA
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Personnel

1. Number of staff (current and additional): NA
 2. If from existing staff resources, number of staff hours: NA
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Legal

1. Legal Requirement: Statutory Requirement: Section 9EA of the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
 2. Call-in: Not Applicable
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All Wards
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

- 3.1 The investigation of doorstep crime is considered to be a priority in Bromley, with many of the victims being either elderly or vulnerable.
- 3.2 The investigation process can involve the scrutiny of financial records, intelligence or consideration of complaints made to Trading Standards or partner agencies; the process often uncovers additional victims that were not always apparent in the first instance. Moreover, rogue traders regularly operate, physically and electronically, beyond local authority borders; as such, the perpetrators of the crime may reside in Bromley, but the victims may reside elsewhere, and vice versa.
- 3.3 With the above in mind, whilst there could be a single perpetrator operating within the borough, the geographical spread of the associated victims can span the country, and Trading Standards Services or Police Forces within the relevant victim locations are not usually prepared to progress substantial investigations based on individual reports.
- 3.4 Home Office counting rules for fraud indicate that primacy for this type of investigation sits with the authority of the suspect's address, or for business related fraud, the office address or the Head Office of the company. However, in order to investigate, officers need the delegated authority to interview both victims and alleged perpetrators that reside (or operate) outside of our borough. The ability to do so affords substantial evidential value, which in turn can make the difference between securing a successful prosecution or not.
- 3.5 There are current investigations of significance currently in train, whereby the alleged perpetrators reside in Bromley, and whose victims are multiple and widespread. These investigations are being carried out with the support of National Trading Standards, and consumer detriment is thought to be in excess of £2M.
- 3.6 Moving forwards, the investigations require officers to approach 26 different English Local Authorities and a further 6 in Wales, Scotland and Northern Ireland, where the victims reside, and possess the delegated authority to accept the functions of those particular authorities, and this is an Executive function. (See Appendix 1)
- 3.7 Executive functions are vested in the Leader of the Council who can discharge them personally, or arrange for them to be discharged by:
- the Executive,
 - a sub-committee of the Executive,
 - a Portfolio Holder,
 - an officer or
by another local authority
- 3.8 Article 11 of the Constitution, which covers delegation to and from other local authorities, is ambiguous as it could be inferred that accepting or delegating Executive functions to other local authorities is a matter for Council rather than the Leader /Executive. This was recognised, and the General Purposes and Licensing Committee agreed to modify Article 11 of the Constitution to clarify the separation between Executive and Non- Executive functions on 23rd March 2021.
- 3.9 The progression of these investigations will bring considerable benefits to Bromley's trading environment, as well as consumers. Bromley based businesses trade with people all over the UK, and there is a reputational risk attached to allowing illegal practices or serious magnitude to go unchallenged.

3.10 Where investigations have started in Bromley, they may not be able to continue without the evidence that could be obtained from victim witnesses outside of the borough, and this cannot be obtained without the necessary delegation of authority that is being sought. This in turn leads to a risk that the confidence of consumers is detrimentally affected if it is perceived that rogue traders go unpenalized. In addition, should a soft enforcement stance be taken, rogue traders may see Bromley as an environment where their practices can go unchallenged.

4 IMPACT ON VULNERABLE ADULTS AND CHILDREN

4.1 Both these investigations and moreover others that will follow feature vulnerable adults, including those in Bromley, heavily, with significant losses financially and incalculably to their wellbeing.

5 LEGAL IMPLICATIONS

5.1 Section 9EA of the Local Government Act 2000 and the Local Authorities Functions and Responsibilities) (England) Regulations 2000 allow an authority to delegate Executive functions to the Executive of another authority. The Executive can accept the delegation of function from the authorities set out in the recommendations pursuant to these provisions. Officers should ensure appropriate agreements are in place to formalise the delegation of function from other authorities.

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| Non-Applicable Sections: | PROCUREMENT IMPLICATIONS, Personnel Implications. Policy Implications FINANCIAL IMPLICATIONS |
| Background Documents: (Access via Contact Officer) | Council 19 April 2021 Minor Constitution Changes Report |

Appendix 1 List of Local Authorities

| England | Wales | Scotland | Northern Ireland |
|---|--------------------------------|----------------------|-------------------------|
| Bedford Borough Council | Carmarthenshire County Council | Aberdeenshire | Northern Ireland |
| Birmingham City Council | Ceredigion County Council | Fife, Scotland | |
| Bucks & Surrey | | Scottish Borders | |
| City of Sunderland | | The Highland Council | |
| Cornwall | | | |
| Derbyshire | | | |
| Devon, Somerset & Torbay | | | |
| Dorset | | | |
| Essex | | | |
| LB Havering | | | |
| LB Redbridge | | | |
| LB Southwark | | | |
| Leicestershire County Council | | | |
| Norfolk | | | |
| North Tyneside Metropolitan Borough Council | | | |
| Northamptonshire City Council | | | |
| Oxfordshire | | | |
| Plymouth City Council | | | |
| Sefton Metropolitan Borough Council | | | |
| Sefton Metropolitan Borough Council | | | |
| Sheffield City Council | | | |
| Southampton City Council | | | |
| West Yorkshire | | | |
| Wiltshire | | | |