

Decision Maker: EXECUTIVE

Date: 19th October 2022

Decision Type: Non-Urgent Executive Key

Title: Delegation of Function Amendment And Change to the Scheme of Delegation to Officers (Trading Standards)

Contact Officer: Graeme Preston, Trading Standards Manager,
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Chief Officer: Colin Brand, Director of Environment and Public Protection

Ward: (All Wards);

1. Reason for report

The report follows a decision by the Executive on 30th June 2021 to accept Delegation of Function in certain Trading Standards investigations.

This report is in part concerned with one of those investigations where delegation of function has been provided by the two local authorities in Appendix 1.

This report relates to retrospective delegation of function from these two authorities in order to correct an error on the face of the approved minutes,

This report also seeks to explicitly delegate the Director of Environment and Public Protection to accept and to give a delegation of function from local authorities or their Executives in respect of other current and future investigations.

The purpose is to clarify the previous decision in order to preclude the possibility of the risk of a successful challenge in related prosecutions.

2. RECOMMENDATIONS

The Executive is asked to agree:

- 2.1 That the delegation of functions from local authorities (listed in Appendix 1) for adoption for the purpose of legal proceedings be ratified retrospectively by the Executive;**
- 2.2 To Delegate authority to the Director of Environment and Public Protection to accept and to give a delegation of a function from another local authority or their /Executive regarding unrelated current and future investigations by adopting the following amendment to the Scheme of Delegation to Officers in relation to section 15-2 - Functions Delegated to the Director of Environment & Public Protection by adding new (j) and consequential renumbering:**

(j) Exercise the functions of the Council to delegate a function or to receive a function from another local authority or its Executive in relation to trading standards and consumer protection, including prohibiting the sale of dangerous goods, promoting fair trading and investigating or prosecuting offences. Note: this delegation operates in addition to Article 11.04 of the Constitution.

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: Existing Policy
 2. Making Bromley Even Better Priority:
(4) For residents to live responsibly and prosper in a safe, clean and green environment great for today and a sustainable future.
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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 and significant consumer detriment is considered to be a priority in Bromley, with many of the victims, particularly those of doorstep crime, 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 will be investigations of significance, whereby the alleged perpetrators reside in Bromley, and whose victims are multiple and widespread.
- 3.6 Moving forwards, a specific Money Laundering investigation requires the delegation (with the local authorities listed in Appendix 1) as well as, separately, delegation of function for other current and future cases as required.
- 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, was possibly 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; this change was approved by full Council on 19th April 2021. .
- 3.9 The progression of this and other 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 This investigation features vulnerable adults, including one in Bromley, with significant losses financially and incalculably to their wellbeing arising from doorstep crime. Other investigations particularly those relating to doorstep crime will impact on vulnerable adults.

5 LEGAL IMPLICATIONS

- 5.1 Section 9EA of the Local Government Act 2000 (the '2000 Act') 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. As explained in this report, the previous report was intended to include the delegations now sought in the recommendations to this report but due to an oversight they were not expressly set out in the minutes. The recommendations to this report now seek authority from the Executive to correct the error on the face of the minutes, retrospectively. Officers should ensure appropriate agreements are in place to formalise the delegation of function from other authorities.
- 5.2 Although arguably there is unlikely be any valid challenge in relation to the Executive giving retrospective agreement it is considered that it would be safer to proceed with the authorising minutes reading clearly.
- 5.3 Article 7.06 of the Constitution provides that the exercise of functions which are the responsibility of the Executive will be determined by the Leader.
- 5.4 Regulation 7 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 (the '2012 Arrangements') provides that where, by virtue of regulation 5 (Discharge of an executive's functions by another relevant authority or another relevant executive) or 6 (Discharge of a local authority's functions by the relevant executive of another authority), arrangements are in force for the discharge of any functions of a local authority, or for the discharge of any functions which are the responsibility of the executive of that authority, by the relevant executive of another authority, those functions are to be treated, for the purposes of section 9E of the 2000 Act, as functions which are the responsibility of the relevant executive of that other authority.
- 5.5 Section 9E sets out who is responsible for executive functions (here Regulation 7 is saying it is to the Executive- see 5.3 above) and allows further delegation (unless the Leader says otherwise). Section 9E (3) then provides that the executive may arrange for the discharge of any of those functions : (a) by a committee of the executive, (b) by an area committee, or (c) by an officer of the authority.
- 5.6 Pursuant to the 2012 Arrangements and 2000 Act the Executive is being asked to agree the following recommendation:
- To Delegate authority to the Director of Environment and Public Protection to accept a delegation or to give a delegation of a function (as may be the case) from another local

authority or their Executive regarding unrelated current and future investigations by adopting the following amendment to the Scheme of Delegation to Officers in relation to section 15-2 - Functions Delegated to the Director of Environment & Public Protection by adding new (j) and consequential renumbering:

“(j) Exercise the functions of the Council to delegate a function or to receive a function from another local authority or its Executive in relation to trading standards and consumer protection, including prohibiting the sale of dangerous goods, promoting fair trading and investigating or prosecuting offences. Note: this delegation operates in addition to Article 11.04 of the Constitution.”

- 5.7 The change to the Scheme of Delegation to Officers will be reported to Council as required by the Council’s Constitution

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

Brighton and Hove City Council
North Yorkshire County Council