

FIGHTING FUND:

**Guidance for Local Authority
Trading Standards Services**

JUNE 2011

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Fighting Fund: General guidance and criteria for funding

1. Background

In the Consumer White Paper published in July 2009, the Government announced a new central “Fighting Fund” to support Local Authority Trading Standards Services enforcement activity. The main purpose of the fund is to tackle rogue traders and consumer targeted scams by supporting enforcement activity such as investigations, prosecutions or civil proceedings of national or regional importance or for innovative enforcement activity. We will look to support exceptional cases which rank strongly against the published criteria and have high Added Value.

The information set out below is intended to provide some guidance on the issues which will be considered by the Advisory Panel and the information that they will need to assess any application.

2. Funding

Funding may be provided to Local Authority Trading Standards Services for investigations or for civil or criminal proceedings (and such proceedings could include appeals), which are either prospective or ongoing. Applications must satisfy the criteria outlined below, upon which the application for funding will be assessed by an independent Advisory Panel. The Advisory Panel will make recommendations on the allocation of funding to the Director of Consumer and Competition Policy or a Deputy Director in the Consumer and Competition Policy Directorate, in the Department for Business, Innovation and Skills (BIS), for final decision on behalf of the Secretary of State. Applicants will then be advised of the decision.

Please note that we will not be able to provide funding if the application does not meet the criteria set out here.

BIS is keen that all Local Authorities in England and Scotland and Wales should have the opportunity to participate in this project, but it is unlikely to be possible to fund all applications. Decisions on the nature and extent of financial support will be made on a case by case basis and will take account of the limited funding available. Applications for funding need to be realistic and bear in mind the limited budget available. Applications for excessively large sums of money are unlikely to succeed. Funding requests should also be as specific as possible. As the fund is limited meeting the criteria will not guarantee funding. Conversely, if there are insufficient applications that strongly meet the criteria, the funds may not all be spent. Any under-spend cannot be rolled forward into the following year.

Regional Illegal Money Lending and Scambuster teams already receive funding from BIS for investigation and prosecution work and so applications from these teams must clearly demonstrate Added Value. Applications should state why funding cannot be provided through a more appropriate route, for example, applications for funding in respect of internet-enabled cases, scams or illegal money lending should explain whether the Internet Enforcement Project, Scambuster or Illegal Money Lending teams have been involved in any part of the investigation, and whether there has been any discussion with any of these teams about taking the case and the reasons why it is not being taken forward by them.

Applications for funding should not be made in a case where funding could create a conflict of interest for the Secretary of State, for example because the defendant would have a right of appeal to the Secretary of State (It is considered that such circumstances should be rare).

Enforcement decisions are a matter for the enforcing authority. Neither the Advisory Panel, nor BIS will provide any legal or other advice in relation to a proposed investigation, whether on evidence to be obtained, sufficiency or admissibility of evidence, public interest or any other aspect. This will remain the responsibility of the Local Authority or other agency with responsibility for enforcing consumer protection legislation. Similarly, any decision whether to apply for a compensation, confiscation or costs order in the event of a conviction is solely a matter for the prosecuting authority to determine.

Funding is provided for prospective or ongoing enforcement activity and any BIS approval to provide funding must be given in advance of spend. Payment of funding will be in arrears of spend. Invoices should be submitted quarterly and include a detailed breakdown of expenditure for that period. All invoices must be received by the end of the financial year to which they relate. This means for example, that for 2010/11, invoices for that year's funding must be submitted before 31 March 2011. **Funding cannot be paid in advance of spend and cannot be provided until a contract has been agreed.**

Any agreement by BIS to support a case by the Local Authority will be on the basis that the Local Authority agrees to pay to BIS a proportion of any proceeds it receives from the Asset Recovery Incentivisation Scheme under the Proceeds of Crime Act 2002 (or from any similar incentivisation scheme), back into the Fighting Fund, which proportion is equivalent to the proportion paid by BIS of the total funding of the Project. The exact proportion may be varied on a case by case basis when a funding decision is made.

In addition, where a Local Authority is awarded costs as a result of a successful prosecution or civil proceedings, BIS will be entitled to reimbursement from the Local Authority up to a maximum of the funding provided by BIS in relation to those proceedings or the costs awarded to the Local Authority - whichever is the lower.

However, the aggregate amount paid or reimbursed to BIS under the arrangements described in the two previous paragraphs will not in any event exceed the amount of the funding provided by BIS. Any amounts paid or reimbursed to BIS under those arrangements will be allocated to the Fighting Fund (for as long as the Fighting Fund remains in existence) and, accordingly, will be applied to support other enforcement activity (but this activity need not be by the same Local Authority which paid or reimbursed the relevant amounts).

Any agreement by BIS to fund an investigation or proceedings should not be interpreted as a direction or opinion that such investigation or proceedings should be pursued, or pursued in any particular way. Similarly, a decision by BIS not to provide funding should not be taken as any reflection on the merit of the Local Authority in pursuing any action.

The Local Authority shall be entitled to terminate an Agreement at any time by giving notice to that effect to BIS and at the same time returning to BIS any funding provided under an Agreement.

3. Application Deadlines

The fund starts on 1 April 2011. Applications for funding are invited twice this year; in June and October. If all the funding is unallocated after these two rounds then there may be a further round in January 2012. **Applications must be received at BIS within 3 weeks of the invitation to make bids,**

4. How to Make an Application

- 4.1 All applications must be submitted electronically to Tony Jeremiah at tony.jeremiah@bis.gsi.gov.uk.
- 4.2 A contact name, telephone number and e-mail address should be provided with the application in case of any questions that arise and for a future point of contact regarding the progress of the investigation or case.
- 4.3 Local Authorities are welcome to contact BIS to discuss their application before submitting it or if they have any questions regarding the guidance. Please contact Tony Jeremiah (tony.jeremiah@bis.gsi.gov.uk, Telephone: 020 7215 1615).

4.4 The criteria

Funding can only be provided to Local Authority Trading Standards Services for applications which fall within the consumer policy areas covered by BIS. These policy areas are outlined in Appendix 1. Applications must meet the Added Value Test in Appendix 1.

Applications should concern a vitally important issue, as opposed to which one which could be considered as routine. Applications must also meet the following Technical Tests in order to seek support from the Fighting Fund.

Applications must meet one or more of the Tests (i-vii) below:

- i. The case is of national or regional importance,
- ii. An important legal precedent needs to be set or an important legal opinion needs to be obtained from external advisers,
- iii. Innovative enforcement practices are being used,
- iv. The case is particularly complex,
- v. The case involves a serious risk to consumer safety,
- vi. The case involves fraud, or
- vii. Consumer choice is significantly undermined.

An explanation of these criteria is provided in Appendix 1. Funds are limited and so satisfying the criteria will not guarantee a grant of funding.

- 4.5 The Advisory Panel will need to know why the Local Authority is unable to wholly fund the activity itself and will also want to know what funding and resources the Local Authority has put in itself, and what funding and resources it intends to continue contributing.
- 4.6 The formal application must be in the form of a letter, which will be considered by or on behalf of the Advisory Panel. A template letter of application is provided in Appendix 2. The letter should set out your request and address the points highlighted in the template letter. Your request should also indicate if a decision is required urgently.
- 4.7 Please attach a copy of all supporting paperwork. This should include details of any proposed courses of action to be taken by the Local Authority, plus, if appropriate, any evidence outstanding.
- 4.8 Please mark the application and any supporting paperwork "PROTECT: INVESTIGATION". Please also make any application and provide all information on an anonymised basis, i.e.

without identifying any trader or other person against whom action is being taken or contemplated, or who is otherwise involved in the matter. If the Local Authority considers this approach is not feasible (for example because the identity of the trader is self-evident from the circumstances, or it would impose a serious burden on the Local Authority to anonymise information, or the Local Authority considers that the identity of the trader is important to a funding decision), please contact BIS to discuss this before submitting the information. It is expected that these will be exceptional circumstances.

- 4.9 BIS may wish to make public details of the outcome of cases it has supported, in consultation with the Local Authority concerned.

5. Composition of Advisory Panel

The Advisory Panel will compose senior representatives of:

1. Consumer Focus
2. Independent Trading Standards consultant;
3. Local Better Regulation Office (LBRO);
4. Trading Standards Institute (TSI);
5. Office of Fair Trading (OFT);
6. Department for Communities and Local Government (CLG);
7. Department for Business, Innovation and Skills;
8. The Scottish and Welsh Assembly Governments as necessary; and
9. Intellectual Property Office (IPO) as necessary.

Details of specific members may vary from time to time, but the list of members will be maintained and published by BIS. To enable flexibility, a quorum of 5 Advisory Panel members will be required before recommendations can be made to BIS with respect to funding applications.

Appendix 1

Explanation of Criteria

The criteria that need to be met in order to seek funding from the Fighting Fund are outlined below. The guidance provided below is indicative of the types of applications that could be considered to receive funding, but is not intended to be an exhaustive list. Prospective or ongoing enforcement activity could include investigatory costs, prosecution costs or costs of civil proceedings (including appeal costs).

It should be noted, however, that even where applications satisfy all the criteria the funding may not be granted due to, for example, a high level of applications.

Funding can only be provided to Trading Standards for applications which fall within consumer policy areas covered by BIS, namely:

1. Policy issues in relation to:

- a) Consumer credit;
- b) Chemical safety of consumer products;
- c) Consumer and product safety;
- d) Doorstep and Distance selling;
- e) General duty not to treat consumers unfairly or mislead businesses;
- f) Intellectual property;
- g) Package Holidays;
- h) Pricing;
- i) Product labelling;
- j) Sales promotions and misleading advertising;
- k) Sunday Trading;
- l) Timeshare;
- m) Unfair terms in consumer contracts;
- n) Weights and Measures.

Prospective applicants are welcome to contact BIS to check whether an application falls within a BIS policy area, if unsure, before submitting an application.

Enforcement action should follow the Hampton principles of inspection and enforcement¹ and be taken in accordance with Macrory's sanctioning principles and characteristics of an appropriate sanctioning regime. For example, action should be proportionate to the nature of the offence and the harm caused.²

Applications must satisfy the Added Value Test:

¹ Reducing administrative burdens: effective inspection and enforcement, Philip Hampton, HM Treasury, March 2005, <http://www.hm-treasury.gov.uk/d/bud05hamptonv1.pdf>

² Regulatory Justice: making sanctions effective, Final report, Professor Richard B Macrory, November 2006, <http://www.bis.gov.uk/files/file44593.pdf>

2. Added Value Test

The Added Value Test must be met before financial assistance is approved. Added value or 'Additionality' means that assistance is necessary for the programme or project to go ahead in the form proposed. Applications need to demonstrate one or more of the following:

- that the case would not go ahead or continue at all without the assistance proposed;
- that it would not go ahead or continue on the same timescale (for additionality to be satisfied on this basis there needs to be a very substantial bringing forward of the project);
- that it would not go ahead or continue on the scale proposed;
- that it would be of a significantly different nature or significantly adversely affected. The case with financial assistance would have to be shown to be significantly different or significantly adversely affected without such assistance.

3. Technical Tests

Applications must also satisfy one or more of the Tests (i-vii) below to be considered for funding.

i. The case is of national or regional importance

Cases of national or regional importance include, for example, where it causes or risks significant consumer detriment to a large number of consumers across the country or in one or more local authorities or regions; where one or more local authorities or regions have received a significant number of complaints about a particular trader; where the outcome of the case may impact on a large sector of the market nationally or internationally; or where action by individual local authorities has been or would be ineffective at tackling the problem.

OR

ii. An important legal precedent needs to be set or an important legal opinion needs to be obtained from external advisers

Where an important law or principle needs to be clarified and such clarification cannot be provided by guidance. This could also include obtaining an important legal opinion which is required from external advisers to clarify a strategic enforcement issue that will be of use to Local Authorities to assist in consistency in the decision making process of taking enforcement action.

OR

iii. Innovative enforcement practices are being used

This may include situations where there is an innovative use of resources within Trading Standards Services, or in conjunction with other enforcement agencies; across Local Authority boundaries; using new technologies in an innovative way. It may also include cases which offer clear benefits in terms of cost-effectiveness and impact, for example where they can provide:

- co-ordination and leverage of resources;
- additional capability (for example access to intelligence or use of differing powers);
- partnership working regionally, nationally or internationally (including forging new partnerships and influencing policy makers);
- opportunities to develop the law or advance policy; and/or
- action is against an industry-wide or cross-market problem.

It would also be of benefit where such innovative enforcement practices can be shared with other Trading Standards Services.

OR

iv. The case is particularly complex

Cases may be complex for a number of reasons, for example, due to the number of traders, products or services involved; the number of law enforcement agencies involved or the nature or the geographical spread of the case.

OR

v. There is a serious risk to consumer safety

This includes unsafe goods (excluding food) and services which cause or could lead to significant danger to consumers.

OR

vi. The case involves fraud

Fraud has a wide definition, and this includes deceptive practices calculated to cause significant detriment to consumers.

OR

vii. Consumer choice is significantly undermined

Consumer choice may be significantly affected where a trader's practice misleads consumers or a lack of information prevents consumers from making a fully informed purchasing decision which leads to significant consumer detriment. This could also include tackling rogues who use aggressive conduct by harassment, coercion or undue influence as outlined in the Consumer Protection from Unfair Trading Regulations 2008.

Appendix 2

Letter of application

[Please mark the letter and any supporting paperwork “PROTECT: INVESTIGATION.” Please also provide the information referred to below on an anonymised basis, i.e. without identifying any trader or other person against whom action is being taken or contemplated, or who is otherwise involved in the matter. If the Local Authority considers this approach is not feasible (for example because the identity of the trader is self-evident from the circumstances, or it would impose a serious burden on the Local Authority to anonymise information, or the Local Authority considers that the identity of the trader is important to a funding decision), please contact BIS to discuss this before providing the information. It is expected that this should only be necessary in exceptional circumstances].

FAO: Tony Jeremiah
Consumer and Competition Policy Directorate
Department for Business, Innovation and Skills
3rd floor, 1 Victoria Street
London SW1H 0ET

Dear Sir/Madam,

Re: Request for support from the Fighting Fund

I am writing to request support from the Fighting Fund. The total costs being sought is: £ *[insert sum requested]* for *[insert brief description of the enforcement activity undertaken]*.

Please find enclosed:

1. Description of the enforcement activity, i.e. “the Project”, to be funded
2. Brief summary of the history of the case to date
3. Summary of the issues involved, including information on why the case is being investigated and how the case satisfies the following criteria:
 - Relevant BIS policy area
 - Added Value information
 - Relevant Technical Test(s)
4. Details why intervention and support is required, including why you believe BIS funding is needed in this case
5. Details of why the Local Authority cannot pay for the case either in part or at all
6. Summary of costs incurred by the Local Authority to date, including a breakdown of the costs
7. Detailed breakdown of what financial support is being sought from BIS and its purpose
8. Details of the anticipated total costs for the case
9. Assessment of the likelihood of success of the case
10. Other supporting paperwork, including details of any proposed courses of action to be taken by the Local Authority, plus, if appropriate, any evidence outstanding.

The matter cannot wait to be considered at the next meeting of the Advisory Panel as the matter is urgent because..... [*Please delete if not necessary*]

Yours faithfully,

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