

## **Divisions Affected -**

### **CABINET 24 May 2022**

#### **Delegation of the Power to Prosecute in the Matter Known as Operation Argus**

#### **Report by Director of Community Safety and Chief Fire Officer**

### **RECOMMENDATION**

1. **The Cabinet is RECOMMENDED to**
  - (a) Pursuant to section 101 of the Local Government Act 1972 and section 9EA of the Local Government Act 2000, approve the delegation of specific powers from the county council to the London Borough of Bromley in relation to the investigation and prosecution of companies and individuals associated with the investigation known as Operation Argus
  - (b) Authorise the Head of Legal and/or the Director of Law and Governance to enter the necessary agreements to implement this delegation

### **Executive Summary**

2. The London Borough of Bromley (LBB) have been investigating a number of complaints from members of the public involving potential offences of fraud, including conspiracy, regulatory offences and/or offences under the Serious Crime Act 2015, referred to as Operation Argus.
3. A consumer affected by this alleged fraud is a resident of Oxfordshire and is willing to support the investigation and any associated criminal proceedings
4. A local authority's power to prosecute an offence is derived from section 222 of the Local Government's Act 1972, where the local authority considers such action to be expedient for the promotion or protection of the interests of the inhabitants of their area
5. Previous court decisions have confirmed the wide definition of the statutory power and discretion given to local authorities under section 222 to prosecute in legal proceedings, but that each case will turn on its own facts
6. However, as none of the complainants associated with the alleged offending reside within LBB and as the suspect companies have ceased trading, it may

prove challenging to establish that a prosecution is in the interests of the inhabitants LBB

7. As a result, LBB do not wish to rely on section 222 and are asking those authorities with complainants who reside within their own area to provide a specific delegation of authority
8. The agreement would authorise LBB to conduct investigations into the companies and individuals involved in the alleged offending, instigate and conduct such legal proceedings as may appear appropriate against all such companies and individuals, in connection with any offences as may appear to have been committed within the administrative area of Oxfordshire County Council
9. If agreed, all and any expenses and investigation costs incurred for Operation Argus will be met by the LBB. LBB would keep Oxfordshire County Council fully informed of the conduct, progress and outcome of any relevant activities on the part of the LBB arising from this agreement.

## **Exempt Information**

10. The information contained within the annexes to this report relates to action taken or to be taken in connection with the prevention, investigation or prosecution of crime
11. The public should therefore be excluded for any consideration of the annexes to this report because its discussion in public would be likely to lead to the disclosure to members of the public present of information in the following category[ies] prescribed by Part I of Schedule 12A to the Local Government Act 1972 (as amended):

1. Information relating to any individual

7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime

and since it is considered that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, in that disclosure may prejudice active criminal investigations and potential legal proceedings by another party.

## **Corporate Policies and Priorities**

12. Protecting residents and business from the harms caused by criminals and those breaching consumer protection legislation supports the strategic priorities of supporting the health and wellbeing residents, as well as helping to maintain Oxfordshire as a centre of innovation

13. The recommended course of action also meets with the stated purpose of the trading standards service - to keep individuals, communities, businesses and livestock safe from harm; protect individuals and businesses from financial loss and preventing unfair practices.

## Financial Implications

14. No financial implications for Oxfordshire County Council.

Comments checked by:

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## Legal Implications

15. Any agreement entered into by officers, in relation to this requested delegation of authority, will only be done so on the basis that there will be no resource implications for Oxfordshire County Council and that all legal action will be resourced by LBB. In regard to costs, Oxfordshire County Council will not be liable for costs arising from such proceedings or any other proceedings arising therefrom and LBB will carry the burden of costs in this matter.
16. It is acknowledged that there are differing views on a local authority's ability to prosecute in legal proceedings, where complainants may be resident outside of their administrative area. If authority is delegated to LBB in this matter, it is in response to a specific request of LBB and should not be seen as creating a precedent as to how Oxfordshire County Council may treat a similar matter.

Comments checked by:

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## Risk Management

17. Whilst the majority of any risk associated with the substantive issue that this agreement seeks to deal with rests with LBB, such as the inherent prosecution risk any legal action carries, reputational risks to Oxfordshire County Council may be present. This includes both from any unsuccessful/unjustified legal action taken by LBB, as well as being seen to prevent the inclusion of the Oxfordshire-based complaint within the intended course of action.
18. These risks are mitigated by LBB accepting all and any expenses incurred in relation to Operation Argus, as well as a commitment from LBB to keep Oxfordshire County Council fully informed of the conduct, progress and outcome of any relevant activities on the part of the LBB arising from this agreement.

NAME Rob MacDougall, Director for Community Safety and Chief Fire Officer

Annex: Annex 1 – Background Information (exempt information)

Annex 2 – Draft Agreement under Section 101 Local Government Act (exempt information)

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