

Regulation Audit and Accounts Committee

18 July 2022

Inspection on use of investigatory powers by Trading Standards

Report by Director of Law and Assurance

Summary

The County Council is able to use powers under the Regulation of Investigatory Powers Act to assist investigations and enforcement action in connection with functions of the Council relating to potential unlawful activity within the area.

These powers are used rarely and in relation to very limited areas of Council activity, primarily Trading Standards and the Council maintains an up to date policy governing the exercise of the powers. This committee has previously approved the policy and oversees the regulatory functions of the Council

The use of the powers is subject to inspection by the investigatory Powers Commissioner and this report summarises the outcome of the recent inspection and the actions following the recommendations of the external inspectorate including a proposal for a further internal review to be reported to this Committee.

Recommendation

- (1) That the Committee notes the outcome of the recent inspection and the actions and proposals in response to its recommendations
- (2) That the Committee confirms that a further report be presented to the Committee at a future meeting to receive a review of the operation of investigatory powers in accordance with the recent inspection output.

Proposal

1 Background and context

- 1.1 The Regulation of Investigatory Powers Act provides all public authorities which have criminal enforcement powers with a range of powers which it can choose to exercise to help investigations and enforcement activity. The powers cover activity such as the use of covert activity during an investigation.
- 1.2 The County Council has historically only exercised these powers in connection with Trading Standards enforcement work – principally to help trace trade in counterfeit, unsafe or unlawful products and to provide evidence that is used to deter such activity and to prosecute when considered necessary
- 1.3 The Council maintains a policy on its use of regulated investigatory powers and this policy was last reviewed by the Committee in March 2020. Minor updates

have been made mainly to record changes to post holders with authority to approve the use of the powers in particular cases.

- 1.4 The use of the legislation is overseen nationally by the Investigatory Powers Commissioner's Office (IPCO). Regular inspections of the County Council are undertaken by IPCO and the last inspection took place in February 2022.

2 Proposal details

- 2.1 An inspection of the Council's use of the specific powers provided under the Regulation of Investigatory Powers Act was carried out in February 2022. The inspection focused in the use of 'covert human intelligence sources' (officers using false identities to engage suspected offenders). The report was produced in March 2022 and a full response setting out the Council's response to the report's recommendations was sent on 25th May by the Chief Executive.
- 2.2 The inspection report made relatively minor suggestions to address certain matters of process and recording in the use of the powers. Those are summarised in the appendix to the report followed by the Council's responses.
- 2.3 It can be seen that recommendation 8 suggests that an internal review of the management and operation of the service be undertaken and the outcome reported to the responsible body overseeing regulatory activity within the Council. That function is carried out by this Committee and the Committee is asked to confirm that it would wish to consider such a report. It will be timetabled once the resources within Internal Audit and Legal Services have been finalised and the work planned.

3 Other options considered (and reasons for not proposing)

- 3.1 The report covers the inspection of a regulated function and the Council's response to the inspection outcome. No other options were considered in connection with this process.

4 Consultation, engagement and advice

- 4.1 As all activity under the Act and covered by the inspection is undertaken by the Trading Standards service the head of Trading Standards and the Assistant Director were consulted and contributed to both the inspection and the response to the inspection report. The inspection was overseen by the Director of Law and Assurance who is responsible for the Council's compliance with the Act and the Council's policy.

5 Finance HR and other resources

- 5.1 There are no financial or wider resource consequences arising from this report as no costs were incurred in connection with the inspection or the response and no other support services are affected or drawn upon.

6 Risk implications and mitigations

Risk	Mitigating Action (in place or planned)
Non-compliance with the Act or Inspection report	The use of the powers is strictly limited and exercised only by officers with appropriate authority and training. The inspection report is

Risk	Mitigating Action (in place or planned)
may harm the reputation of the Council	considered and responded to at a senior level and approved by the Chief Executive.
Non-compliance with the Act or the Council's policy may prejudice investigations or enforcement activity	The use of the powers is strictly limited and exercised only by officers with appropriate authority and training and this is confirmed through the inspection process.

7 Policy alignment and compliance

Our Council Plan

- 7.1 The Council's Trading Standards service activity, supported by the RIPA policy helps the Council to meet its priorities in relation to keeping people safe from vulnerable situations given the nature of the activities, subject to Trading Standards intervention, which may adversely affect vulnerable people in the community. The use of the powers also enables a more efficient deployment of resources in certain situations of suspected unlawful activity.

Legal implications

- 7.2 The Council's activity is tightly regulated by the legislation and monitored by the independent inspectorate. The Council's enforcement actions would be undermined by any misuse or misapplication of the powers and so compliance with the Council's policy is important as are the strict internal controls over the use of the powers. The inspection report confirms that the Council is acting lawfully and responsibly in this respect.

Equality duty and human rights assessment

- 7.3 There are no specific implications arising from this report but both equality impact and Human Rights implications were considered when developing the Council's policy and at the point at which the use of the powers is considered.

7.4 Climate change – Crime and disorder –Public health – Social value

No implications arising from this report.

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Appendices

Appendix A - Summary of response to Inspection recommendations

Background papers

None