

	<b>Audit and Standards Advisory Committee</b> 28 March 2024
	<b>Report from the Corporate Director of Governance</b>
	<b>Lead Member – Deputy Leader &amp; Cabinet Member for Finance, Resources &amp; Reform (Councillor Mili Patel)</b>
<b>Review of the Use of Regulation of Investigatory Powers Act 2000</b>	

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Not applicable
<b>Open or Part/Fully Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
<b>No. of Appendices:</b>	One Appendix A: Changes to RIPA policy & Procedures - Appendix 1-4
<b>Background Papers:</b>	None
<b>Contact Officer(s):</b> <small>(Name, Title, Contact Details)</small>	Debra Norman, Corporate Director Governance 020 8937 1578 <a href="mailto:debra.norman@brent.gov.uk">debra.norman@brent.gov.uk</a>  Biancia Robinson, Senior Constitutional & Governance Lawyer 020 8937 1544 <a href="mailto:biancia.robinson@brent.gov.uk">biancia.robinson@brent.gov.uk</a>  Tola Robson, Chief Lawyer Litigation and Licensing 020 8937 1455 <a href="mailto:Omotolani.Robson@brent.gov.uk">Omotolani.Robson@brent.gov.uk</a>

## 1.0 Executive Summary

- 1.1. This report explains the Council's use and conduct of surveillance techniques in accordance with the Regulation of Investigatory Powers Act (RIPA) 2000; and complies with its annual reviewing obligations as set out in Brent Council's RIPA policy and procedures.

## **2.0 Recommendations**

That the Committee notes:

- 2.1 The contents of this report.
- 2.2 The changes to the RIPA policies to reflect the Council's organisational change and new Chief Executive as an Authorising Officer.

## **3.0 Detail**

### **Contribution to Borough Plan Priorities & Strategic Context**

- 3.1 The appropriate use of, and compliance with RIPA and RIPA related powers ensures confidence in the operation and good governance of the council and supports delivery of the Borough Plan.

### **Background**

- 3.2 The Regulation of Investigatory Powers Act 2000 (RIPA) gave the Council significant powers in order to investigate serious matters and offences. It enables the Council to use covert surveillance, covert human intelligence sources (CHIS) and the acquisition of service user or subscriber information in relation to communications data in a manner which is compatible with Article 8 of the European Convention on Human Rights (which governs an individual's right to respect for their private and family life). Before the Council may undertake covert surveillance, there are various criteria which must be met including approval of the application by a Magistrate.
- 3.3 Covert surveillance techniques include static surveillance (e.g. taking up an observer post to monitor the activities and movements of those suspected of having committed criminal offences); mobile surveillance (e.g. following someone to see where they are going without their knowledge) and using hidden CCTV at a crime hotspot. RIPA refers to these techniques as 'directed surveillance'. It also extends to the use of undercover officers and informants. RIPA refers to these as 'Covert Human Intelligence Sources' (more commonly referred to as CHISs).

### **Inspection**

- 3.4 The Council is periodically inspected by Investigatory Powers Commissioner's Office (IPCO). Inspections focus on RIPA policies, procedures and practice. The last inspection was undertaken on 9 March 2020; when the Inspector was happy with his findings.
- 3.5 During 2023, IPCO reviewed the way in which Inspections / oversight of local authorities was conducted. It ceased undertaking routine inspections instead, requiring each local authority to provide a written update, in the first instance, on its compliance with the legislation. Responses were then assessed followed by a determination as to whether or not a remote, or in some cases, in-person

inspection was required. This approach takes cognisance of the general decline in the use of covert powers by many local authorities. In July 2023 officers provided a written response addressing a range of matters identified by the Inspector which included internal governance and oversight, policy refreshes; annual updates to Elected Members; ongoing training and awareness raising; internal compliance etc. In August 2023 the Inspector confirmed “I am satisfied that your reply provides your assurance that ongoing compliance with RIPA 2000 and the Investigatory Powers Act 2016 will be maintained. As such, your Council will not require further inspection this year.”

#### Changes to RIPA policy

- 3.6 The RIPA Policy and procedures were last revised in 2023 in relation to a further power to extract (Communications) Data held on electronic devices.
- 3.7 Substantive changes to the RIPA Policies and Procedures requires formal Cabinet approval. Whilst no substantive changes are recommended as a result of this review, it is proposed to make minor amendments to reflect the Council’s recent organisational changes. Extracts of the changes to the RIPA Policy are produced as Appendix A for Members consideration.

#### Oversight

- 3.8 The Council’s use and conduct of covert surveillance techniques is overseen internally by the Council’s Monitoring Officer, who also acts as the Council’s Senior Responsible Officer (SRO) for the purposes of the Home Office Codes of Practice.
- 3.9 The Monitoring Officer reviews RIPA related topics such as internal training, social media, applications/authorisations and changes in addition to keeping the Council’s RIPA policy and procedures document under review and updates it as and when necessary. This ensures compliance with the most current legislation, statutory codes of practice, technical guidance and best practice. It is also necessary to keep the list of authorising officers up to date and for administrative, technical and presentational changes to be made from time to time to ensure the document acts as a helpful source of instruction and guidance to all officers of the Council. In addition, the SRO is responsible for:
  - a) the integrity of the process in place for the management of CHIS and directed surveillance;
  - b) compliance with the codes of practice;
  - c) engagement with the IPCO inspectors when they conduct their inspections;
  - d) oversight of the implementation of post-inspection action plans;
  - e) ensuring authorisation officers are of an appropriate standard (where a IPCO report highlights concerns about the standard of authorising officers, the SRO will be responsible for ensuring the concerns are addressed).
- 3.10 In February 2024, RIPA Refresher training was provided for all officers involved in the RIPA regime and identified in the RIPA Policy at Appendices 1-4. The

training included a refresher of the legislation, recent guidance from the Investigatory Powers Commissioners Office and current thinking.

- 3.11 In accordance with paragraph 4.47 of the Covert Surveillance and Property Interference Code, Councillors have a formal scrutiny role in relation to RIPA and should regularly review the authority's use of RIPA. Accordingly, it was decided that this Committee should conduct a high-level annual review. Any significant policy changes recommended by the Committee arising from its review will be reported to Cabinet for decision.

#### Use of RIPA

- 3.12 Following the introduction of legislative changes in the RIPA regime, the number of RIPA authorisations declined within local authorities and this position has not changed. In more recent years, this combined with the shrinking size of the council investigative teams, and in part the improvements with investigative methods has meant there is less reliance on directed surveillance. In Brent, for the current financial year, there has been zero RIPA Directed Surveillance or CHIS authorisations. Table 1 below sets out the directed surveillance authorisations over the last five years. Table 2 shows the number of requests for communications Data pursuant to the Investigative Powers Act 2016 and their purpose.

Table 1

<b>Year</b>	<b>Number of Authorisations</b>
<b>2023/24</b>	<b>0</b>
2022/23	0
2021/22	0
2020/21	0
2019/20	0

Table 2

<b>Year</b>	<b>Number of Requests</b>	<b>Purpose</b>
2017/18	6	Freedom pass fraud
2018/19	39	Doorstep crime and rogue trading investigation
2019/20	0	
2020/21	18	Subletting of council housing
2021/22	0	
2022/23	2	Fraudulent subletting a council property Fraudulent use of blue badge concession.
2023/24	20*	Fraudulent use of blue badge concession. Car trader investigation

		Rogue roofer investigation
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\*At the time of writing this report, these are all pending applications in relation to the three separate investigations.

3.13 RIPA powers are now predominantly used to assist Trading Standards investigations. They are also used in the context of serious fraud investigations both by Trading Standards and the council's Audit and Investigations team.

#### **4.0 Financial Considerations**

4.1 There are no financial implications arising out of this report.

#### **5.0 Legal Considerations**

5.1 The legal considerations are contained within the body of the report.

#### **6.0 Equity, Diversity & Inclusion (EDI) Considerations**

6.1 Under section 149 of the Equality Act 2010, the council has a duty when exercising its functions to have 'due regard' to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty.

6.2 The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

6.3 Due regard is the regard that is appropriate in all the circumstances.

6.4 There are no equalities implications arising from this report.

#### **7.0 Additional Considerations**

7.1 There are no additional considerations in relation to the following areas arising from the report

- a) Stakeholder and ward member consultation and engagement
- b) Climate Change and Environmental considerations
- c) Human Resources/Property considerations
- d) Communication considerations

**Report sign off:**

**Debra Norman**

Corporate Director Governance