

## Appointments Committee

Meeting held on Tuesday, 23 March 2021 at 2.00 pm in This meeting is being held remotely; to view the meeting, please click <a href="https://webcasting.croydon.gov.uk/meetings/12055" alt="here" title="here">here</a>

### MINUTES

**Present:** Councillor Hamida Ali (Chair);

Councillors Jason Cummings, Lynne Hale, Stuart King, Joy Prince and Callton Young

**Also Present:** Katherine Kerswell, Interim Chief Executive  
Sally Robertson, Counsel to the Committee  
Asmat Hussain, Interim Executive Director of Resources and Deputy Monitoring Officer  
Sue Moorman, Director of Human Resources  
Stephen Rowan, Head of Democratic Services and Scrutiny  
Richard Penn, Author of the Independent Investigation report  
Ros Foster, External Legal Advisor to the Council Browne Jacobsen

### PART A

#### **5/20 Urgent Business (if any)**

There was none.

#### **6/20 Independent Investigation in Response to the Report in the Public Interest**

Members considered a report that asked the Committee to receive the report of the independent investigation into corporate management actions, organisational systems and environment in response to the Report in the Public Interest ('the report of the independent investigation'). In receiving the report of the independent investigation, the Committee was further asked to assure itself that the methodology followed in the production of that report enabled the Committee to place reliance upon it in considering the recommendations detailed in the accompanying Part B report.

At the outset of the item, the Committee noted that there were both Part A and Part B recommendations and expressed a desire to consider as much of the report in Part A as possible. Members also noted that an additional Part B supplementary paper had been circulated prior to the meeting.

In introducing the Part A report, the Interim Chief Executive clarified the purpose of the report to the Committee and highlighted three points, namely: to recognise that it was necessary for the Committee to consider the report of the independent investigation for the limited purposes set out in this report only and that due to a number of ongoing confidential processes, the report of the independent investigation would not be publicly accessible at this time; to seek assurance on the methodology of the report of the independent investigation and, while extensions had been granted to two individuals named in the report to complete a factual accuracy check, this did not prevent the Committee from considering the methodology followed; and to consider the suggested lines of enquiry listed at para 4.12 of the covering report.

The Committee heard that the investigation into senior management actions had been commissioned in response to the Report in the Public Interest (RIPI) issued by the Council's external auditors, Grant Thornton. That RIPI had detailed significant issues relating to the Council's financial position, its financial governance and its overall effectiveness as an organisation. The independent investigation had been commissioned by the Interim Chief Executive to gain an understanding into how the Council had reached the situation identified in the RIPI and, if any concerns were identified, then due consideration would be given to whether any action would need to be taken under the relevant processes. This action had been noted by the Council at its extraordinary meeting on 19th November 2020.

The Council had subsequently committed itself to delivering a comprehensive improvement plan as part of its bid for a capitalisation direction from the Ministry of Housing, Communities and Local Government (MHCLG). The Council was required to deliver that wide reaching plan as part of the conditions made by MHCLG when it approved the capitalisation direction.

Understanding how the Council had arrived in the position described in the RIPI was essential to ensure that the improvement plan contained the necessary actions so that the Council could avoid finding itself in a similar situation in the future. Members were further informed that the RIPI had been followed by a Non-Statutory Rapid Review of the Council by MHCLG and a Strategic Review of the Council's Companies and Other Entities commissioned by the Council.

The reports of both of these reviews had echoed many of the findings of the RIPI. The Council had also issued two section 114 notices as it was unable to balance its expenditure in-year without external support.

A Value for Money review was being undertaken by the Council's external auditors on the refurbishment of the Fairfield Halls and that review was

expected to report its findings shortly. One of the dominant questions facing the Council was how had Croydon got into the situation that it was in and was the only Council to do so when all local authorities had faced the extended period of austerity and the pandemic? The Housing, Communities and Local Government Select Committee had invited the Leader of the Council, the Interim Chief Executive, the Interim Director of Finance and the Council's external auditor to attend one of its meetings to discuss this specific question.

The Committee heard that building a clear understanding of how Croydon had got into the situation identified in the RIPI and other external assessments was essential to both understand what needed to be improved and to demonstrate to staff that a new culture of accountability and delivery was in place. Members further heard that all those interviewed in the independent investigation were given clear directions that the investigation was to seek understanding, and that if concerns came to light they would be given full consideration under the relevant process. This was also described in the terms of reference for the investigation.

The Interim Chief Executive further highlighted to the Committee that the report of the independent investigation did not express the Council's formal views and opinions. Rather the report set out information that had already been published and detailed the genuinely held personal and professional opinions of the broad range of individuals that had been interviewed.

The interim Executive Director of Resources and Deputy Monitoring Officer informed the Committee that the Council had received three late pieces of correspondence from current and former employees in relation to the report of the independent investigation and that the late correspondence would be shared with Members in the Part B section of the meeting. Counsel to the Committee advised Members on the tasks that it had to consider at the meeting. The task facing Members in the Part A section of the meeting was limited to receiving the report and to formally check the process that had been followed to produce the report. Members were advised that all interviewees had been given an opportunity to confirm the written record of their interview and only those confirmed notes were used. The interim Executive Director of Resources and Deputy Monitoring Officer reaffirmed that all Members on the Committee had confirmed that, following consideration, they did not have a conflict of interest that would prevent them from considering this item.

At this stage the Committee invited the independent investigator, Richard Penn, to explain the methodology that he had followed in undertaking his investigation and in writing the final report. The independent investigator emphasised his independence to the Committee, confirming that he had no current or historic ties to the borough, did not know any of its current elected

Members or officers, save for the Interim Chief Executive, who he had encountered on occasion during their long careers in local government. The independent investigator also emphasised his long track record in undertaking such investigations and informed Members that he had been doing so for over twenty years. This had included investigations for a wide range of public sector organisations and included Local Authorities, Government Departments, NHS bodies and Magistrates bodies. While many investigations focused on specific allegations against individuals, the independent investigator had also undertaken several broader investigations of similar nature to the investigation he was commissioned to undertake in Croydon.

In all such cases, the independent investigator had been expected to include in his report back any concerns in relation to individuals that needed to be considered under separate processes, whether those individuals were elected members or officers. That requirement was explicit in the terms of reference for the investigation in Croydon and the independent investigator took great care to ensure that all those persons that he met with were aware of the potential for other processes to follow on as a corollary of the independent investigation, though that would be a decision for the council.

Members further heard that one of the challenges of producing the report had been the commitment to anonymity and confidentiality where it had been requested. The report sought to give an indication of where all views had come from, such as from a former Cabinet Member or from an ex-employee. The final report set out the views and comments of a wide range of interviewees, and those views and comments were set in the context of a series of public reports that had described the Council's failures.

Work on the investigation and report had begun at the end of November or early December 2020, in a context of many Members, staff, residents and others holding concerns that the investigation and report could be a 'cover up' and that those Members and officers primarily responsible for the Council's failings would not be held to account. Set against this wider context, the investigation and report had been conducted to ensure that it was credible, independent, respected anonymity while addressing both the terms of reference and the specific concerns raised by those involved.

The Independent Investigator had received one challenge that the report had not drawn on all of the relevant documentation that it was required to. Members heard that this was not the case and that all relevant documents that had formed part of the considerations of the findings in the report were listed in full in the appendices. The Independent Investigator also described the process by which individuals had come to be interviewed. Some interviewees such as members of the executive leadership team and the

Cabinet had been obvious to be approached to be interviewed. Names were suggested by those who were being called for interview and an offer via the interim chief executive's weekly message via email and on the intranet had also been made by the Council to any member of staff to contact the Independent Investigator if they wished to be interviewed. These steps resulted in more than 60 people being interviewed. Every person that put themselves forward was interviewed without exception.

The Council had also taken steps to ensure that people could put themselves forward to be interviewed without fear of recrimination. This was one of the key reasons why the investigation and the report sought to ensure that contributions were anonymised as far as possible.

In questioning, Members heard that the Independent Investigator had originally been an economist by training and had been a Chief Executive of a number of large local authorities. He had a strong working knowledge of both local government and of employment law. The Investigator also had access to legal advice through the Council if it was required.

The Committee also heard that the terms of reference for any investigation would be based upon whatever incident or events took place that required Page 10 investigating. In Croydon's case, the prompting event had been the Report in the Public Interest and the finding that there had been 'collective corporate blindness'. The terms of reference had on that basis sought to identify why that had been the case.

In response to a question, the Committee also heard that the Independent Investigator had never faced an allegation that he had either strayed beyond or not complied with the terms of reference of an investigation that he had undertaken. There had been occasions where during an investigation it had been necessary to request that the commissioning body considered redefining their terms of reference which did not include areas that were being uncovered during an investigation. This had not been the case during the investigation in Croydon, where the Independent Investigator had been satisfied that he had complied with the broad terms of reference.

The Committee also heard that the Independent Investigator had a body of experience of undertaking investigations that were focused at an organisational level rather than solely on individual conduct. This included a recent review of organisational culture at the States of Jersey and one at another London Borough focussed on the operational culture of the senior officer team.

Members also heard that the report aimed to be clear in describing how the Council had found itself in the position described in the RIPI, and set out those findings in separate themes, such as the Executive Leadership Team, the Cabinet, the culture of the council and so on. The report also described the factual steps that had been taken by the Interim Chief Executive and others to change the culture of the organisation to ensure that the Council did not find itself in a similar position again in the future.

During the investigation, the Independent Investigator had been cognisant that the report may lead to further investigations being required in relation to individuals under relevant formal processes. This had been kept in mind throughout the investigation so that any subsequent recommendations to the Council to give serious consideration to taking such actions were made with both confidence and relevant evidence.

The Committee further heard that the Independent Investigator had been impressed when he had heard that the Interim Chief Executive had expressed her commitment to take whatever steps and actions were necessary to demonstrate that the Council had changed. The interviews that the Investigator had taken had undertaken with the Interim Chief Executive, the Leader of the Council and other senior officers had demonstrated to the Investigator that there was a yearning at the Council to become an organisation that had learning and accountability at the heart of its culture and to put right the failures that had been identified.

In response to a question, Members heard that the methodology used by the Independent Investigator varied between investigations based on the specific circumstances. However, the Independent Investigator would always seek to give a strong focus to demonstrating his neutrality and independence in any investigation, as well as ensuring that any person with a legitimate contribution to make to an investigation was always given the chance to do so if they wanted to.

The Independent Investigator also informed the Committee that he would have ordinarily have preferred to have met interviewees in person, but that this had not been possible due to the COVID 19 restrictions that had been in place. However, this had not compromised the investigation nor the investigator's understanding of the points being raised during interviews. The production of draft notes for interviewees to amend and redraft had further ensured that the Independent Investigator had not misunderstood any points that had been raised. Interviewees were also given the opportunity to provide additional and further information through this process and this opportunity had been taken up by a number of interviewees during the investigation.

The Committee was further informed that the process for each interview started with an explanation from the Independent Investigator of who he was, his background and the introductory text included at appendix three to the report. The Independent Investigator would then not rely on set questions, but rather let the interview flow while using prompts. At the start of the interviews, the Independent Investigator was very dependent upon the terms of reference and other written documentation to guide interviews. However, as interviews were undertaken, the information provided helped to develop the Independent Investigator's knowledge and understanding of what had taken place in Croydon and helped to inform lines of questioning in subsequent interviews.

As there had been over 60 people interviewed, it had not been possible to go back to every interviewee to ensure that they had all been asked the same questions. However, where the Independent Investigator had felt that contributions from interviewees had been of significant importance, he had returned to early interviewees to test if those contributions were correct or true. The Independent Investigator had identified themes for the investigation based on both the findings of the RIPI, his underpinning knowledge of how local government works, and his experience of previous investigations focussed at an organisational level. Members also heard that the Independent Investigator hadn't sought to edit contributions from interviewees, save to anonymise them. Elements from interviews were then gathered into the themes of the report. There had been no 'cherry-picking' of contributions and almost everything that had been raised in interviews which had been signed off had been included in the draft report.

The Committee also heard that in relation to one of the outcomes described in the terms of reference, namely "to demonstrate the seriousness of the Council's intent to establish a new organisational culture that has learning and accountability at its heart", the measures of success would be in the future.

The theme around culture in the report sought to set out how serious the cultural issues in the organisation had been and that the actions being proposed in relation to the reorganisation of the Council were, in the Independent Investigator's assessment, designed to support the delivery of the above outcome. Members noted that the report contained a triangulation of the views and opinions of those persons interviewed and questioned if there was a conflict between those subjective views and the raising of concerns against individuals.

The Independent Investigator informed the Committee that the opinions and conclusions from both the interviewees and written documentation would always need to be tested in a proper process where it related to action against individuals. The report in front of the Committee described how the Council

had got to the position described in the RIPI and also that it was clear that there were also concerns that needed to be tested in the proper processes. The Committee also heard that the report was balanced and drew equally on written evidence as it did the views and opinions expressed during interviews.

A number of written documents were provided to the Independent Investigator at the outset of the investigation and more were requested by him during its course. The full list of documents considered were listed in an appendix to the investigation report. The Independent Investigator had been provided with a copy of every document that he had requested and had encountered no difficulties in receiving them. In seeking assurance that there were opportunities for all officers and Members to participate in the investigation, the Committee heard that every person suggested to be interviewed was approached and that every person that requested an interview was interviewed. The Committee sought clarification that all persons interviewed could do so 'without fear of recrimination' for being interviewed, rather than any form of 'amnesty' being offered for the actions, inactions and decisions that led to the council's failures. The Independent Investigator confirmed that this was the case and that around ten of the 64 persons interviewed had asked that their contributions be anonymised.

The Interim Chief Executive further informed the Committee that in the autumn of 2020 there had been a real anxiety amongst staff around speaking freely and a fear of being subsequently bullied or targeted. The commitments around anonymity for those participating in the investigation had been raised with the executive leadership team when they had been consulted on the terms of reference. The invite letters sent to the initial 31 people identified for interview had included the original brief for the investigation and had then been subsequently sent the full terms of reference. All other interviewees were sent just the terms of reference and these were also published on the council's intranet site for all staff.

The Committee was also informed that approximately 20% of interviewees sought to make substantive changes to the record of their interview, both in terms of wishing to remove comments or to add comments. There were also around 10-12 interviewees that added additional information through the process of agreeing the record of their interview that had not been covered in their meeting with the Independent Investigator.

The process of agreeing the records of each individual's evidence was designed to both make sure that it was accurate and also a reflection of what they would be prepared to say on the record if their evidence was needed for other formal processes. None of the interviews had been video or audio recorded by the Independent Investigator. It was understood that one



interviewee had recorded their interview without the knowledge or agreement of the Independent Investigator. The Committee also heard that every interview that was used had an agreed and signed record of the interview.

The Independent Investigator also confirmed that he had received no external pressure or influence on his investigation or report. The Independent Investigator had worked with the Interim Chief Executive at the start of the process to identify the initial list of documents and interviewees, and also to finalise the terms of reference to include the provisions around anonymity, but there had been no other external influences beyond that. At no point in the process did the Independent Investigator feel that his independence and neutrality was being compromised or was at risk of being compromised.

Members further heard that the process of seeking legal commentary on the report had not introduced any substantive changes to the conclusions and recommendations that the Independent Investigator had reached. This point was confirmed by the external legal advisor to the Chief Executive, Ros Foster. The Committee agreed to consider the Part B aspects of the report before returning to Part A to formally consider the Part A recommendations.

#### **7/20 Exclusion of the Press and Public**

The following motion was proposed by Councillor Young, seconded by Councillor King and agreed by the Committee to exclude the press and public for the remainder of the meeting.

“That, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that it involves the likely disclosure of exempt information falling within paragraphs 1 and 2 as indicated in Part 1 of Schedule 12A of the Local Government Act 1972, as amended”.

#### **8/20 Independent Investigation in Response to the Report in the Public Interest**

At 3.35pm the Committee returned to Part A and agreed to adjourn the meeting until 23 March 2021. The meeting reconvened at 2pm on 23 March 2021. Attendance at the meeting was unchanged from 17 March 2021, save for the addition of an officer in attendance, namely Richard Barlow, who was also an external legal advisor to the Council and was attending in place of Ros Foster.

The Chair summarised the Committee’s earlier deliberations in regard to agenda item 5, Independent Investigation in Response to the Report in the Public Interest, and the corresponding Part B item. The Chair also confirmed

that the Committee had been circulated a supplementary Part A paper in relation to agenda item 5, a second supplementary paper in relation to the corresponding Part B item and three further Part B appendices. The Interim Chief Executive clarified that there were a number of aspects for the Committee to consider in relation to the report of the independent investigation. The first was to satisfy itself that the methodology of the report was sound and a fair and proper process.

The Committee would also hear the feedback from the Independent Investigator in relation to the fact checking process that had been underway in relation to the report of his investigation and would be asked to consider additional submissions received from those involved in the fact checking process. The Committee would be required to give full consideration to the legal, financial and risk paragraphs of both the Part A and Part B reports.

Finally, the Committee would be asked to give consideration to both the Part A and Part B recommendations. The Interim Chief Executive further drew the Committee's attention to the importance of the other reports that had been published in relation to the Council's recent failings, and explained that the report of the independent investigation should be considered in the context of the wider body of reports into the Council's failings. Before returning to the consideration of the methodology of independent investigation, the Interim Chief Executive explained her rationale for commissioning that investigation.

Members heard that the receipt of a Report in the Public Interest from external auditors would ordinarily be enough to commence formal processes against Members or Officers. However, in light of the seriousness of the Council's failings, the Interim Chief Executive commissioned the Independent Investigation in order to gain a more detailed understanding of how the Council had reached the position that it was in. The investigation was an additional step that had also been taken in recognition of the seriousness of the Council's situation, the seniority of the individuals involved and to support the Council's commitment to developing an improvement plan.

The Committee was also advised that the report of the independent investigation would look and read differently in its construction to a disciplinary report, as it had been drafted to help develop an understanding of how the Council reached the position that it found itself in, by listening to as many people as chose to participate in the review. A Member informed the Committee that they had received correspondence directly from a third party in relation to this agenda item and sought clarity on whether or not they could ask questions on it.

The Committee was advised that they should focus only on the information that had formally shared with them by the Council and also noted that it was anticipated that further correspondence would be circulated to them in the Part B session in relation to this item. In response to a question, the Independent Investigator informed the Committee that he stood by his responses in the earlier session of the Committee meeting and that there were points that had come out of the Maxwellisation process subsequently that he would speak to in the Part B session of the meeting.

A Member of the Committee expressed concern regarding information being supplied by third parties directly to the Council and sought clarity on how direct contact should be dealt with. The Committee heard from the Interim Executive Director of Resources and Deputy Monitoring Officer that any information received should be referred to her in the first instance for consideration and that any information not received through the proper Council process should be disregarded. The Interim Executive Director of Resources and Deputy Monitoring Officer also agreed to advise Members following the meeting on the difference between the consideration of the proper business before a Committee and how Members should treat lobbying by external parties.

**RESOLVED:**

- 1.1 That the report of the independent investigation into corporate management actions, organisational systems and environment, commissioned in response to the Report in the Public Interest be received;
- 1.2 That the Committee's assurance of the processes followed in the production of the report was confirmed;
- 1.3 That the further recommendations detailed in the accompanying Part B report, as amended, were agreed as detailed in the accompanying Part B minutes;
- 1.4 That the necessity for the members of the Committee to consider the report of the independent investigation for the limited purposes set out in this report only was recognised and that, in view of the ongoing confidentiality of the report of the independent investigation pending the outcome of any and all individual processes, the report of the independent investigation shall not, at this time, be made publicly accessible;
- 1.5 That an executive summary of the report be produced, that will enable the lessons learned and the understanding of how the council has reached this position to be shared. In taking this decision, the committee also confirmed its aspiration to publish the report in full; and
- 1.6 That the commitment to publish the Investigation Report be brought back to a future meeting of the Committee for consideration following the conclusion of all the Council's related confidential processes.

The meeting ended at 10.26 pm

**Signed:**

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**Date:**

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