

## **Appointments and Disciplinary Committee**

Meeting held on Thursday, 23 March 2023 at 2.00pm in Room 1.01 & 1.02, Bernard Weatherill House, Mint Walk, Croydon, CRO 1EA.

### **PART A MINUTES**

- Present:** Mayor Jason Perry (Chair)  
Councillor Lynne Hale (Vice-Chair)  
Councillors Jason Cummings, Patricia Hay-Justice (reserve for Stuart King), Enid Mollyneaux and Callton Young
- Also Present:** Malcolm Davis – Head of Fraud, Risk & Insurance  
Looqman Desai, Deputy Monitoring Officer  
Darce Gocoul – Strategic Support Officer to the Chief Executive  
Elaine Jackson – Assistant Chief Executive  
Katherine Kerswell – Chief Executive  
Adrian May, Head of Democratic Services & Scrutiny  
Stephen Lawrence-Orumwense – Director of Legal Services & Monitoring Officer  
Dean Shoesmith, Chief People Officer  
Simon Trevaskis, Senior Democratic Services & Governance Officer
- Apologies:** Councillor Stuart King

### **PART A**

#### **1. Disclosure of Interests**

Councillor Patricia Hay-Justice declared a disclosable, non-registerable interest in item 6 - Consideration of two of the stayed recommendations from the Penn report in regard to a referral of the report to the Metropolitan Police and referral to Professional Bodies and Institutes, as her partner worked at the same organisation as one of the interested parties. As a result, the councillor left the meeting for the duration of that item.

#### **2. Part A Minutes of the Previous Meeting**

The Part A minutes of the previous meeting held on 23 February 2023 were agreed as a correct record subject to the clarification that the Chief Executive, Katherine Kerswell and the Assistant Chief Executive, Elaine Jackson, had confirmed that they were interviewed by Richard Penn as part of his investigation.

#### **3. Accountability in Local Government**

The Committee considered a report set out on pages 11 to 26 of the agenda which sought to lay out the current landscape of accountability for local government and the options available to the Committee to ensure that the public interest had been properly considered and given its due weight and

attention in relation to the historic issues of the Council. It also proposed recommendations for the consideration of the Committee to start the national debate on accountability in circumstances such as those in Croydon.

The Council's Chief Executive introduced the report, during which the following statement was provided: -

'Today's committee meeting is the culmination of two and a half years painstaking work, piecing together what has happened at Croydon.

A number of independent reports have been commissioned which have attempted to understand not just what happened at Croydon, but how it happened and most importantly for the residents of Croydon, who is accountable for the governance and financial crisis that they and the council have experienced.

The matters before this committee today in considering accountability for what has happened at Croydon, are ground-breaking in local government, as was the financial crisis at Croydon when it was first revealed in September 2020.

The matters before the committee today in considering accountability for what has happened at Croydon are a proportionate and necessary response to the consequences of that financial crisis.

The Council has been forced to ask Government for permission to borrow £369 million pounds just to balance its budget and is having to pay an annual sum of £66 million simply to service its debt. Residents are suffering from reduced council services and increased costs, and staff are having to work in very difficult circumstances.

Members will be familiar with the findings of the first Report in the Public Interest. The conclusion bears repeating today.

"There has been collective corporate blindness to both the seriousness of the financial position and the urgency with which actions needed to be taken. For a number of years, the Council focused on: improvements in service delivery without sufficient attention to controlling the related overspends; investing in the Place area without sufficient attention as to whether the investment delivered the intended outcomes; and financial governance was focused on lobbying government for additional funding which was not supported by actions to contain spending within the funding provided which was its statutory duty."

Members will also be familiar with the findings of the second RIPI into the refurbishment of Fairfield Halls. The conclusion bears repeating today also.

"Throughout the project there have been examples of a failure to discharge duties from a small group of senior officers (the then Senior Statutory Officers and the then Executive Director of Place). These senior officers were responsible for reporting to the then Portfolio holders (the Portfolio Holder for Homes and Gateway Services, for Finance and Resources and the Leader) who were either not briefed by officers and failed to request briefings on the

project or did not take effective action in response to concerns raised by the senior officers.”

And lastly...

“Between 2016 and 2020 the Council spent nearly £67.5 million on the Fairfield Halls refurbishment scheme. In a drive to get the scheme implemented, the Council’s then statutory and other chief officers did not ensure there was an appropriate legal basis for the engagement of Brick by Brick to carry out the works which would avoid legal challenge and enable proper scrutiny and oversight of the project and its costs; did not properly advise members about the independent expert legal advice received or act on that advice; did not secure adequate financial governance for the loans; did not formally and publicly advise members of the risks and changes to the project; and did not seek proper formal authority from members for the expenditure.”

What is important for members to bear in mind today in considering accountability for what happened at Croydon, is that the matters before them are not matters of management error, mistake or simple failure. It is well understood that making mistakes and learning from them is part of improvement.

What is laid out before the committee today, in a number of independent reports is the consequence of the intentional application over a period of seven years of a set of strategies, of the implementation of the 2015 Financial Strategy and the 2018 Medium Term Financial Strategy, of the implementation of the 2015 Homes – our 10 priorities development strategy, of an investment strategy, of a lobbying strategy and statutory and chief officer leadership which did not pay sufficient regard to governance, risk management and internal control when advising members and spending taxpayers’ money.

What is before the committee today, is the cumulative effect of those strategies. It is the consequence of the combined conduct of the political and professional leaderships in their adoption and implementation of those strategies. Together this has led to the council needing £369 million pounds to bail its budgets out.

Today’s whole committee agenda is about accountability for what has happened at Croydon.

The first report describes the current system of accountability in local government, to ensure that all avenues of holding those responsible have been fully considered and taken account of and members are advised to consider requesting the Government to make changes to the national framework of accountability for local government.

Accountability for politicians is primarily exercised through the ballot box. For councillors and for the Executive Mayor – each elected politician can be voted in or out of office. There is also the local government standards and members

code of conduct regime. But the sanctions available for elected councillors and Mayors, in circumstances such as these in Croydon, may be considered by some to be insufficient given the scale of the Council's financial and governance crisis.

Accountability for officers is exercised through their employment contracts - where officers can be appointed, disciplined and dismissed from their posts.

If either a councillor or an officer chose to resign from their post, then the only redress available is through a criminal or civil law claim with evidence of misconduct provided.

To date, Croydon Council has implemented the decisions of this Committee in initiating disciplinary action into the conduct of those chief officers who did not immediately resign. Subsequently however, they did both resign before the disciplinary processes were concluded. Formal complaints were presented into the conduct of two elected members who resigned before the disciplinary processes for them could be concluded.

The strength of public sentiment first expressed by residents in the late summer and autumn of 2020, has not waned. This sentiment centres on the understandable belief that misconduct whilst holding public office should not be rewarded, and that people should be held to account for the damage to Croydon's services and finances.

Sanctions and surcharge regimes for councillors did exist in the past which gave opportunity for further thought before decisions were made as there could be personal consequences. Now nothing of such weight exists and certainly nothing that prevents the act occurring. Any penalties that can be imposed are all after any damage has been done.

But while the call for accountability is understandable and straightforward, the actual process of holding individuals to account is not. That is because fair, proper and proportionate processes of individual accountability require independent consideration by professional bodies, and where, appropriate, the proper authorities such as the police and the crown prosecution service.

Croydon's case is unique in origin and effect, but its consequences do not stand alone. In the light of a number of councils declaring section 114 notices and the vast scale of taxpayers' money required to bail out these councils, a debate is developing as to whether the current accountability framework has sufficient safeguards for local taxpayers and residents.

There can be little doubt that public trust and confidence in the Council has been fractured by the Council's governance and financial crisis. And that the significant and direct impact this has had on all residents has energised calls for your agenda today.

Today's whole committee agenda is about accountability for what has happened at Croydon.

I ask members to consider the recommendations before them and to urge the government to put new arrangements in place so that residents in other local authorities are protected and spared the scale of costs and damage to services that have befallen Croydon Council, its staff and its residents'.

Following the introduction, the Committee welcomed the report, concluding that there was a consensus of support for the recommendations proposed, particularly for pressing the national government on the need to revise the accountability framework for local authorities.

**Resolved:** The Appointments and Disciplinary Committee agreed: -

1. To note the work to date on progressing accountability for the events at Croydon, the accountability options available to the Council and their limitations in the face of responding to the conduct that created the governance and financial crisis at Croydon Council.
2. To note that the consequences and associated costs of such conduct and the accountability processes themselves are borne by Croydon residents.
3. To note that other reports on this Committee's agenda will consider recommendations in regard to referring the suite of reports the council now possesses to the proper authorities such as the Metropolitan Police and also to any relevant professional bodies and institutes who operate a disciplinary code in relation to their membership for their consideration.
4. That the Executive Mayor, as chair of this committee, write to the Secretary of State at the Department for Levelling Up, Housing and Communities (DLUHC) requesting that Government consider the inadequacy of current arrangements in respect of the formal accountability for conduct in public office, and urgently put new arrangements in place to remedy this so that residents in other local authorities are protected and spared the scale of costs and damage to services that have befallen Croydon Council and its Council taxpayers.
5. That the Executive Mayor, as chair of this committee, write to the Committee on Standards in Public Life and Chartered Institute of Public Finance and Accountancy (CIPFA) on the need for an accountability framework in circumstances where there have been catastrophic failures in financial governance such as that experienced in Croydon.
6. That the Executive Mayor, as chair of this committee, write to the Chair of the Levelling Up, Housing and Communities Select Committee on the need for an accountability framework in circumstances where there have been catastrophic failures in financial governance such as that experienced in Croydon.

#### **4. Fairfield Halls Kroll Independent Investigation Report**

The Committee considered a report set out on pages 27 to 38 of the agenda regarding the Fairfield Halls Kroll Independent Investigation Report. The report was introduced by the Head of Fraud, Risk & Insurance, during which it was noted that the Kroll investigation was commissioned following an Extraordinary Council meeting on 3 February 2022, at which the Council formally received the Report in the Public Interest (RIPI 2) issued by the Council's external auditor, Grant Thornton, on 26 January 2022. RIPI 2 detailed significant issues relating to the handling of the Fairfield Halls refurbishment project.

At the Extraordinary Council meeting The Monitoring Officer, announced that he had asked that the issues raised in RIPI 2 be reviewed to identify any concerns or areas that needed further consideration from a fraud perspective in accordance with the Fraud Act.

Following that meeting, having taken account of the points raised during the discussion of the item, further consideration was given by officers as to the mechanism and approach that could be taken to further investigate issues arising from RIPI2 which would encompass screening for fraud. Officers determined that it would be appropriate to screen for any concerns of 'wrongdoing' (including fraud) by way of an externally commissioned forensic investigation. This was based on capacity, expertise and independence considerations, leading to the appointment of Kroll Associates to lead the investigation. The independence of the investigation was seen to be crucial to demonstrating the integrity and credibility of the process.

Given the need to act quickly and due to the urgency and speed required to complete the investigation, the Council utilised the Crown Commercial Services Framework RM6188 Lot 3 'Reactive Investigatory Services' and under the guidance of the procurement function a 'mini competition' was run, to select a supplier with the appropriate standing and expertise to complete a stage 1 'scope of investigation' report which would report at a high level on the issues involved and provide a detailed plan on how to investigate matters. The stage 1 report was designed to form a go/no go, stage/gateway and allowed officers (and the supplier) to fully understand what a forensic investigation into this subject would entail. Kroll were appointed for this exercise and their stage 1 report was included as an exempt appendix for the Committee's information.

Following receipt of the report and further detailed consideration by officers, it was determined that Kroll's proposal to complete a detailed stage 2 investigation would be accepted by way of a direct award from the Crown Commercial Services framework. The award was on the grounds of urgency, confidentiality, and the specialism of the provider to provide the outcome required in the timescale required. The full stage 2 report was also provided as an exempt appendix.

It was the professional advice of Kroll that in order for the exercise to achieve full value for the Council, the investigation needed to screen for 'wrongdoing' as a whole. For example, evidence obtained by Kroll during the course of their investigation might not meet the tests for offences under the Fraud Act 2006 in relation to those investigated but might demonstrate a 'breach of fiduciary duty' in relation to key individuals which would lead to different avenues, considerations and remedies for the council, for example the offence of 'misconduct in public office'.

For those identified by Kroll as being key persons/key data custodians (50 in total) and invited for interview, the following high-level terms of reference/objectives were shared: -

'The investigation by Kroll aims to provide clarity over the probity and integrity of decision-making around the Fairfield Halls project, the reasons for the cost overrun and late delivery and the governance failures and whether there is evidence of potential wrongdoing by relevant individuals.

At the conclusion of the detailed investigation, Kroll will produce an evidence-based report that will conclude on these matters in line with the evidence gathered. The report will be used to support Croydon Council in its redress process surrounding events involving delivery of the Project'.

Following the introduction from the Head of Fraud, Risk & Insurance, Zoe Newman, Astrid Ludemann and Ethan Coupland-Sith from Kroll Associates joined the meeting to introduce the findings from their investigation and answer any question arising from the Committee.

The Committee agreed that questions on the investigation process would be taken in the open part of the meeting, while any questions on the findings would be reserved to the closed session.

During the introduction from Kroll, it was advised that the investigation had started with an initial scoping phase which provided time to review the considerable level of material available and conduct fact-based conversations with senior officers at the Council. That enabled the creation of a high-level chronology on the history of the project and provided the detailed investigative data that needed to be reviewed. This results in the aforementioned Stage 1 report. Once the scope of the full investigation had been agreed the process transferred to the detailed investigation phase.

As part of the detailed investigation, the email in-boxes of eleven former employees, identified based on their proximity to the project, were reviewed. This equated to almost 2,000,000 documents for review, so a process using keyword searches was employed to identify where to look. The Committee was advised by Kroll that email was the most independent source of information to begin factfinding. In this instance, email data was also supplemented by data collected from the Grant Thornton RIPI investigations.

The review enabled the identification of individuals who would be in the position to comment on the project, which led to 50 requests for interview. In total 26 individuals responded to these requests, along with five written

submissions. It was noted that three of the individuals withdrew from the process following the leak of the Penn Independent Investigation report.

In September 2022, Kroll began the reporting phase of the investigation which was finalised in March 2023. It was confirmed that although feedback had been given on the report by the Council, the final output was left for Kroll to determine. Since February 2023, Kroll had been undertaking a maxwellisation process with those identified in the report, to give them the opportunity to respond to anything they felt to be inaccurate. This process was now complete, allowing the final report to be presented to the Committee for its consideration.

Following the introduction by the representatives from Kroll Associates, the Committee was provided the opportunity to ask questions on the process of the investigation. The first question whether the investigation was similar to others conducted by Kroll. It was highlighted that Kroll had extensive experience of conducting investigations with other local authorities and were aware of the potential nuances and complexities. As such, there was nothing unusual about the investigation to note.

In response to a question about whether there were any absences of information and how these were dealt with, it was acknowledged that when investigating activity over a long period of time, it was expected that there would be gaps. When this happened, it was important to use other sources of information to provide triangulation. An investigation was an evolutionary process that took account of all available information.

It was advised that it was important when undertaking such an investigation to be aware of potential scope creep and to ensure the focus did not expand into other areas, such as the wider activity of Brick by Brick. Although Kroll did not have access to information held by Brick by Brick, they were able to look at related information held by the Council. It was also confirmed that in certain instances recordings of meetings were viewed to verify any information that had not been included in the minutes.

Of the fifty people identified for interview, these were sub-divided into the following categories: must haves, nice to haves, and those who would be helpful to provide additional context. Many of the interviews helped to provide context, but were not considered to be evidential to what was a fact-based investigation into the chronology of events.

In response to a question about whether the representatives from Kroll were satisfied that they had access to sufficient information to reach its conclusions, it was confirmed that they were comfortable with the level of data they had been provided access to. The final report achieved its aims in providing a context for decision-making over the refurbishment and provided an answer to the questions, why was the project overbudget, why was the project late and whether there was any evidence of wrongdoing.

Regarding the maxwellisation process, it was acknowledged that it was not an easy process as there were choices to make, particular as the report identified



individuals. The full report was not shared with everyone named. Instead, a list was compiled of those named, who were provided with packs to comment on the specific issues raised where they were named. Once provided with packs, individuals were given ten days to respond, with one extension granted due to extenuating circumstances. The maxwellisation process was focussed towards identifying any factual inaccuracies rather than providing an opportunity to raise issues on the conclusions of the report.

Following its initial questioning on the process for the investigation, Committee agreed to move into a closed session to allow for a discussion of the confidential, Part B report relating to this item. At the conclusion of its discussion on the confidential information, the Committee agreed to return to an open session to conclude its deliberations on the recommendations set out in the report.

**Resolved:** The Appointments & Disciplinary Committee: -

1. Received and considered the report of the independent investigation into matters arising from the Fairfield Halls Report in the Public Interest conducted by Kroll Associates (Kroll) and
2. Agreed that the Kroll investigation and report have achieved the objectives set and can be relied upon.

#### **5. Exclusion of the Press and Public**

The following motion was proposed by Mayor Perry, seconded by Councillor Young and agreed by the Committee to exclude the press and public for the discussion of the exempt material contained in the remainder of the agenda. The Committee returned to open session on each item to conclude its deliberations on the respective recommendations set out in the reports.

“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, 2 and 5 as indicated in Part 1 of Schedule 12A of the Local Government Act 1972, as amended”.

**NOTE:** Councillor Patricia Hay-Justice left the meeting for the duration of the following item due to the aforementioned disclosable, non-registerable interest, before returning to the meeting at the item’s conclusion.

#### **6. Consideration of two of the stayed recommendations from the Penn report in regard to a referral of the report to the Metropolitan Police and referral to Professional Bodies and Institutes**

The Committee considered a report set out on pages 39 to 326 of the agenda concerning recommendations made in the Independent Report by Richard Penn, which the Committee had previously agreed to stay pending the receipt of the Kroll report.

The report was introduced by the Chief Executive, during which it was noted that the purpose of the report was to offer advice to the Committee on the two stayed recommendations from the Penn Report, taking account of the findings in the Kroll Report.

It was highlighted that the issues detailed in the Penn report had resulted in the Council being the first London borough in 30 years to issue a Section 114 Notice, and the first ever to issue three. This was the result of a range of issues at the Council from 2014 through to September 2020 relating to the action, or lack of action, from within the councillor leadership, statutory officers, and chief officers of Croydon Council. Both reports had found that there were insufficient governance and assurance processes in place to enable the Council to perform its public duties.

The current political and corporate leadership of the Council was duty bound to ensure that those involved are now held to account in order to restore public confidence in the local authority.

The recommendations for consideration by the Committee included potentially referring the various reports to the Metropolitan Police for them to consider whether any further action was warranted. If agreed by the Committee, a request would be made for the Mayor to meet with the Metropolitan Police to discuss how this process could be supported going forward.

The other recommendation related to the membership of professional bodies which uphold the standards of the relevant professions. The Committee was being asked to consider referring the reports, along with the names of individuals to professional bodies to consider further action. If agreed, it would be delegated to the Chief Executive and Monitoring Officer to follow up with other professional bodies if any further came to light.

It was confirmed that it would be a matter for the respective bodies to reach their own judgement on whether any investigation into the conduct of any individual is warranted.

As the Penn Report did not identify specific individuals, it was questioned whether an external professional body would be able to identify who was subject of the referral. It was highlighted that the second Report in the Public Interest identified post holders who the external auditor considered to have failed in their statutory duties. Support could be offered to the organisations to navigate the reports.

At this point the Committee agreed to move back into a closed session to discuss the exempt material appended to the report, before returning to an open session, where the following recommendations were agreed.

**Resolved:** The Appointments & Disciplinary Committee agreed: -

1. That the Penn report be referred to the Metropolitan Police for their consideration as to whether any further action is warranted.
2. That in addition to the above, the two Reports in the Public Interest, the Non-Statutory Rapid Review report, the PwC report into the Council's Companies and other liabilities, the Kroll report and all other relevant documents also be referred to the Metropolitan Police for their consideration as to whether any further action is warranted.

3. That the individuals listed in Exempt Appendix A be referred to the relevant professional body and institute [if knowledge of membership enables the council to do so]
4. The Penn report, the two Reports in the Public Interest, the Non-Statutory Rapid Review report, the PwC report into the Council's Companies and other liabilities, the Kroll report and all other relevant documents be referred to relevant professional bodies and institutes for their consideration.
5. To delegate authority to the Chief Executive, in consultation with the Monitoring Officer, to agree any further referrals to relevant professional bodies and institutes based on existing or new information.
6. To note that a meeting will be requested with the Metropolitan Police for the Mayor as part of the implementation of recommendations 1 and 2 above

**7. Consideration of the recommendation concerning a potential repudiatory breach by the former Chief Executive of her contract of employment and potential breach of her settlement agreement**

The Committee considered a report set out on pages 327 to 330 of the agenda regarding the recommendation made in the Penn report concerning a potential repudiatory breach by the former Chief Executive of her contract of employment and potential breach of her settlement agreement.

The report was introduced by the Chief People Officer, during which it was noted that a report would be considered by Council at its meeting on 29 March 2023 on the governance arrangements for settlement agreements. This would ensure the Council had robust arrangements in place for settlement agreements that satisfied a clear, best value case for council tax payers and complied with the Government's statutory guidance for special severance payments.

In this regard, the Council, through the General Purposes Committee had recently approved for recommendation to Council, governance arrangements for settlement agreements to ensure best value was achieved and there is compliance with the statutory guidance.

At this point the Committee agreed to move back into a closed session to discuss the exempt material appended to the report, before returning to an open session, where the following recommendations were agreed.

**Resolved:** The Appointments & Disciplinary Committee agreed: -

1. That in the Committee's opinion, the Kroll report provides yet more evidence of a repudiatory breach by the former chief executive of her contract of employment.
2. That in the Committee's opinion, it is strongly in the public interest to take legal action to recover as much of the monies paid to the former chief executive as is legally possible. In particular, taking legal action is an

effective means of holding the former chief executive to account and restoring public trust and confidence in council processes.

3. That the Committee, therefore, supports the taking of legal action in all the circumstances and for officers to take the next steps under existing delegated powers.

#### **[PUBLIC VERSION OF PART B MINUTES]**

#### **8. Part B Minutes of the Previous Meetings**

The part B minutes of the meeting held on 23 February 2023 were agreed as a correct record.

#### **9. Fairfield Halls Kroll Independent Investigation Report**

*Please note that a full confidential minute has also been produced for this item, although the resolutions agreed by the Committee are set out in the public minute above.*

#### **10. Consideration of two of the stayed recommendations from the Penn report in regard to a referral of the report to the Metropolitan Police and referral to Professional Bodies and Institutes**

*Please note that a full confidential minute has also been produced for this item, although the resolutions agreed by the Committee are set out in the public minute above.*

#### **11. Consideration of the recommendation concerning a potential repudiatory breach by the former Chief Executive of her contract of employment and potential breach of her settlement agreement**

*Please note that a full confidential minute has also been produced for this item, although the resolutions agreed by the Committee are set out in the public minute above.*

*The meeting closed at 4.58pm*