

Appointments & Disciplinary Committee Agenda



To: Mayor Jason Perry (Chair)
Councillor Lynne Hale (Vice-Chair)
Councillors Jason Cummings, Stuart King, Enid Mollyneaux and
Callton Young

A meeting of the **Appointments & Disciplinary Committee** which you are hereby invited to attend, will be held **Thursday, 23 February 2023 at 10.00 am. Room 1.01 and 1.02 - Bernard Weatherill House, Mint Walk, Croydon CR0 1EA.**

Katherine Kerswell
Chief Executive
London Borough of Croydon
Bernard Weatherill House
8 Mint Walk, Croydon CR0 1EA

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www.croydon.gov.uk/meetings

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AGENDA

1. Apologies for Absence

To receive any apologies for absence from Members.

2. Disclosure of Interests

Members are invited to declare any disclosable pecuniary interests (DPIs), pecuniary or non-pecuniary interests they may have in relation to any item(s) of business on today's agenda.

3. Part A Minutes of the Previous Meeting (Pages 5 - 8)

Part A and Open Part B Minutes of the meeting held on the 9th November 2022

4. CONSIDERATION OF THE PUBLICATION OF THE INDEPENDENT INVESTIGATION REPORT BY RICHARD PENN (PART A)
(Pages 9 - 14)

5. Exclusion of Press and Public

The following motion is to be moved and seconded where it is proposed to exclude the press and public from the remainder of a meeting or a particular item:

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

6. Part B Minutes of the Previous Meeting

Part Part B Exempt Minutes of the meeting held on the 9th November 2022

7. CONSIDERATION OF THE PUBLICATION OF THE INDEPENDENT INVESTIGATION REPORT BY RICHARD PENN (PARTB)

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Appointments and Disciplinary Committee

Meeting held on Wednesday, 9 November 2022 at 2.00pm in the 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, Rowenna Davis (reserve for Enid Mollyneaux) and Stuart King

Also Present: 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

1. Apologies for Absence

Apologies for absence were received from Councillors Enid Mollyneaux and Callton Young

2. Disclosure of Interests

Members confirmed that their entries on the Council's register of interests were up to date and that they had no further disclosures to make.

3. Part A Minutes of the Previous Meetings

The Part A minutes of the previous meeting held on 12 October 2022 were agreed as a correct record.

4. Update on Richard Penn's Independent Report

The Committee considered a report set out on pages 7 to 11 of the agenda which had been requested by the Committee at its previous meeting on 13 October 2022, to provide public clarity on status of the Richard Penn's Independent Report. The report was introduced by the Chief Executive, during which the following was noted.

- The report had been requested to enable the Committee to set the record straight on the report and provide reassurance on the integrity of the process.
- The report began from a discussion between the Local Government Association (LGA), the Chief Executive and the former Leader of the Council, Hamida Ali, as a means to start understanding what had

happened at Croydon and how the Council had reached the position it found itself in at the time.

- At the time there was a lot of anger amongst staff about a range of issues including the settlement made to the former Chief Executive, the Report in the Public Interest (RIPI) issued by the external auditor and the Section 114 notice, which meant it was important to commission an independent investigation.
- Terms of reference were reviewed by the Executive Leadership Team, following which individuals were contacted for interview. This in turn led to others coming forward, which resulted in the decision to open the investigation to all staff and members who may wish to input. In total 64 people were interviewed, with a written note of each discussion provided and signed off as an accurate record before inclusion in the report.
- As well as interviews, Richard Penn also drew on other reviews such as RIPI, the Non-Statutory Rapid Review and the PWC Review of the Council's Companies.
- The report was received by the Council on 9 February 2021, at which point the Executive Management Team was suspended by the former Director of HR. A copy of the report was delivered to the Committee and it met on 17 February 2021 to review these suspensions.
- The Committee met again on 17 March 2021 to review the maxwellisation process and question Richard Penn on his report. At this meeting the Committee agreed to follow the JNC disciplinary process for the former Executive Management Team, to take further legal advice on the content of the report and commission the external auditor to undertake a value for money review of the Fairfield Halls refurbishment. This review subsequently led to the second Report in the Public Interest in February 2022.
- When the Committee met on 27 April 2022 a series of actions were agreed, including waiting on the outcome from the Kroll investigation before proceeding with publication. It was agreed the Committee remained committed to publication and requested that maxwellisation process begin with a view publishing the Penn Report once the Kroll investigation had concluded.
- At the same meeting it was agreed that recommendations concerning the Member Code of Conduct and officer disciplinary processes would be progressed.
- The Committee was clear that it did not want to publish the report while staff disciplinary processes were ongoing to ensure there was no undue impact upon these proceedings. The final disciplinary process concluded in September 2022.
- In response to reports in the media making allegations that the Council was not dealing with the report, it was highlighted the Committee had met thirteen times total on the report, but there was a need to follow the due process required for disciplinary procedures. It was factually incorrect to say the report had been buried or withheld.

- It was anticipated that a draft of the Kroll report would be available by the end of November.
- Regarding the leak of the report, it was clarified that the Council had informed all individuals identified in the report of the leak, except for one who was already aware.
- It was important that the Committee requested this report as it allowed the record to be set straight in terms of the process taken by the Committee to protect council tax payers from the cost of possible legal action against the Council if the report was published without following due process.

Following the introduction to the report the Committee discussed its content, with the importance of clarifying the process and timeline in public noted. The Committee acknowledged that there was understandably frustration at the delay in publication but confirmed that it had been agreed at each stage by the Committee where further action was needed. It had always been a choice for the Committee to weigh publication of the report against the risk of litigation. It was always the intention to have the report published in as full a version as possible and now that the disciplinary process had concluded there could be a greater push toward publication.

It was agreed that it would be useful for the Committee to agree a recommendation that the report on the process and timeline be brought to the attention of officers and Members.

In response to a question about the steps still required before publication, it was confirmed that responses had been received from five of the nine individuals identified in the report, which were being worked through by Legal. Once this process had concluded there would need to be a view reached on the risk to the Council of legal action based on either defamation or data protection, which would need to be balanced against the public interest of publication. The outcome from this work would be brought back to the Committee for a decision, setting out the potential risks, followed by the version for publication being sent to the individuals involved, which meant it was unlikely the report would be published before the new year. It was highlighted that the Kroll investigation may affect the timing of publication depending on the outcome, as it may be concluded that publication would prejudice any potential action arising from the Kroll report.

It was clarified that once the Committee agreed a final version of the report for publication, the individuals identified would be sent the report, but would no longer be able to make further representations having already had two opportunities. Although there may be legal representation made that the Council was duty bound to review.

It was agreed that the Committee would meet again before Christmas to receive a further update on the progress made towards publication. It was also agreed that an executive summary of the Penn Report setting out the organisational learning, which could be published in the interim, would also be included for consideration at the next meeting.

Resolved: That –

1. The contents of the update report are noted

2. The 'Update on Richard Penn's Independent Report' considered by the Committee is brought to the attention of staff and Members.
3. That a further meeting of the Appointments & Disciplinary Committee is convened in December 2022 to consider a further report on the publication of Richard Penn's Independent Report and a potential executive summary of the learnings from the report.

5. Exclusion of the Press and Public

The following motion was proposed by Mayor Perry, seconded by Councillor Hale 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, 2 and 5 as indicated in Part 1 of Schedule 12A of the Local Government Act 1972, as amended".

[PUBLIC VERSION OF PART B MINUTES]

6. Part B Minutes of the Previous Meetings

The part B minute of the meeting held on 13 October 2022 was agreed as a correct record.

It was noted that both the Chief Executive and Assistant Chief Executive were in attendance for the Part B section of the meeting, contrary to the attendance recorded for that section of the meeting.

7. Response to Query from External Auditor Relating to Former Chief Executive Settlement Agreement

Please note that a full confidential minute has also been produced that includes confidential resolutions of the Committee.

Resolved:

1. To approve the draft response to the External Auditor's query. Note that the response is based on the Monitoring Officer's findings following the due diligence enquiries.
2. For the avoidance of any doubt, and for the reasons set out in the Monitoring Officer's findings, the Committee does not endorse the decision of the August 2020 Appointments Committee that the settlement payments made to the former Chief Executive were value for money.
3. The Committee requests the Corporate Director of Resources and the Monitoring Officer to meet with the External Auditor and convey this decision. Also, that the External Auditor is requested to reflect upon the Committee's decision in the value for money judgement for the 2020/21 financial year in the External Auditor's letter.
4. The draft response be published and submitted to the next meeting of Full Council for noting.

The meeting closed at 3.15pm

REPORT TO:	APPOINTMENTS AND DISCIPLINARY COMMITTEE 23 February 2023
SUBJECT:	CONSIDERATION OF THE PUBLICATION OF THE INDEPENDENT INVESTIGATION REPORT BY RICHARD PENN
LEAD OFFICER:	Katherine Kerswell, Chief Executive
WARDS:	All
PUBLIC/EXEMPT:	Public/Part A

SUMMARY OF REPORT:

The purpose of this report is for the Committee to action the previous decision of the Appointments Committee of 24 April 2022 to stay the publication of the independent investigation report by Richard Penn (the Penn report), subject to a Maxwellisation process and the conclusion of the disciplinary process underway at that time.

Whatever the Committee's decision on publication, implementation of the Penn report's recommendations, and any other action the Committee decides on its own initiative, will be the subject of a follow-up report to be considered by the Committee at a meeting on 23 March 2023.

FINANCIAL IMPACT:

There are no financial implications directly arising.

RECOMMENDATIONS:

For the reasons set out in the report, the Committee is recommended to:

- (i) Consider the Maxwellisation responses received from the interested parties appended at **Exempt/Part B Appendices 3 to 7 to the Exempt/Part B report;**
- (ii) Consider the need for and agree any appropriate targeted redactions having regard to the Maxwellisation responses and, in particular, the proposed redactions set out in paragraph 10.2 of the **Exempt/Part B report;**
- (iii) Consider whether to publish the Penn report at **Exempt/Part B Appendix 1 to the Exempt/Part B report;** and
- (iv) Note the following next steps:

- a) If the Committee decides to publish the Penn report, with or without redactions, the interested parties will be notified as soon as possible and the Penn report will be published on 24 February 2023;
- b) The implementation of the Penn report's recommendations, and any other action the Committee decides on its own initiative, will be the subject of a follow-up report to be considered by the Committee at a meeting on 23 March 2023; and
- c) At that meeting the Committee will also receive the Kroll Fairfield Halls investigation report.

1. BACKGROUND

- 1.1 Most recently, the background to this matter was set out in an exempt/Part B report considered by the Committee on 13 October 2022 and a public report considered by the Committee on 9 November 2022. They were both update reports which the Committee noted.
- 1.2 The background information is re-stated in full in this report because it is an important factor in considering the publication issues in relation to the Penn report.
- 1.3 On 19 November 2020, at an Extraordinary Council meeting, the Council formally received a Report in the Public Interest ('RIPI 1') issued by the Council's external auditor, Grant Thornton, on 23 October 2020. RIPI 1 detailed significant issues relating to the Council's financial position, its financial governance and its overall effectiveness as an organisation.
- 1.4 The Council accepted the findings of RIPI 1 in full and agreed a comprehensive action plan to address the 20 recommendations made by Grant Thornton.
- 1.5 Following receipt of RIPI 1 on 23 October 2020, the (then interim) Chief Executive, had commissioned the LGA to undertake an independent investigation of senior management actions in regard to the findings of RIPI 1 to assess what, if any, formal action is required to be taken under any relevant process. The commissioning of the report was noted in the recommendations at the Extraordinary Full Council meeting on 19 November 2020 in these terms:

"Note that the LGA has been commissioned to support the Council in undertaking an independent initial investigation of senior management actions in regard to the findings of the Report in the Public Interest to assess what, if any, formal action is required to be taken under any relevant process;"

- 1.6 The terms of reference of the independent investigation sought two important outcomes: "The first will be to form the understanding of how and why the

council has arrived in this situation, and the second is to demonstrate the seriousness of the Council's intent to establish a new organisational culture that has learning and accountability at its heart".

- 1.7 The terms of reference also made clear that, if relevant, other formal proceedings would be commenced to deal with any matters identified in the report.
- 1.8 Running in parallel, in response to RIPI 1, there followed several further reviews and reports that commented on and made recommendations relating to the Council's financial position, governance and effectiveness. Those reports include the Strategic Review of Companies and Other investment arrangements (25 November 2020) and the Non-Statutory Rapid Review of the Council undertaken by the MHCLG (1 February 2021). Both reports identified significant issues relating to the Council's financial position and governance and are published.
- 1.9 On 26 January 2022 a second RIPI ('RIPI 2') was issued by Grant Thornton into the refurbishment of Fairfield Halls.
- 1.10 As well as reviews and reports commissioned by the Council, other published reports include the report of the House of Commons Housing, Communities and Local Government Committee on Local authority financial sustainability and the section 114 regime. Although this inquiry was not into the situation at Croydon itself, what happened at Croydon is explored as a case study.
- 1.11 Also, by way of background, to date the Council has issued three s114 notices on 11 November 2020, 2 December 2020 and 22 November 2022.
- 1.12 It is possible to set the decision on the publication of the Penn report in an even broader context by referencing cabinet and full council reports (especially on budgetary and financial strategy matters) and the MHCLG submission requests for a capitalisation direction as well as other such documents. The facts and circumstances that these sources of information speak to are now well-established and have been much discussed.
- 1.13 Other relevant information is set out and discussed in the Exempt/Part B report because it relates to individuals and/or is legally privileged and, in all the circumstances, the public interest in maintaining the confidentiality of this information outweighs the public interest in disclosing the information. For those reasons, the Part B report is exempt from publication or inspection.

2. CONSULTATION

- 2.1 In the Exempt/Part B report, the Maxwellisation processes undertaken for the benefit of the interested parties are explained. The responses received are summarised in that report and set out in full at **Exempt/Part B Appendices 3 to 7** and discussed in that report.

3. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

3.1 See the financial impact section at the beginning of this report.

4. LEGAL CONSIDERATIONS

4.1 The legal considerations and advice are included in the main body of the Part B/Exempt report.

Approved by: Looqman Desai, Deputy Monitoring Officer

5. HUMAN RESOURCES IMPACT

5.1 The confidential HR issues are set out in the Exempt/Part B report.

Approved by: Dean Shoesmith, Chief People Officer

6. EQUALITIES IMPACT

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

6.2 “Due regard” is the regard that is appropriate in all the circumstances. The weight to be attached to each need is a matter for the Council. As long as the Council is properly aware of the effects and has taken them into account, the duty is discharged.

6.3 There are no specific equalities impacts directly arising from this report.

Approved by: Dean Shoesmith, Chief People Officer

7. DATA PROTECTION IMPLICATIONS

7.1 These are discussed in the body of the Part B/Exempt report. In addition, the following principles relating to the processing of data protection, as set out in the UK GDPR, are relevant. Personal data must be:

- 7.1.1 processed lawfully, fairly and in a transparent manner. Fairness involves a consideration of the reasonable expectations of the data subjects in relation to privacy, confidentiality and the processing of their personal data;
 - 7.1.2 collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
 - 7.1.3 adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed;
 - 7.1.4 accurate and, where necessary, kept up to date; and
 - 7.1.5 processed in a manner that ensures appropriate security of the personal data.
- 7.2 Processing of personal data is lawful if, among other reasons, it is “necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”.
- 7.3 The Penn report contains a significant amount of personal data concerning many individuals. Opinions can constitute personal data the same way as facts can. Opinions about others will usually constitute mixed personal data as they are inextricably the personal data of the individual expressing the opinion and the individual(s) the opinion is about.
- 7.4 The term ‘processing’ covers a very broad range of activities including the publication or disclosure of personal data.

Approved by: Dean Shoesmith, Chief People Officer

CONTACT OFFICER: Katherine Kerswell, Chief Executive

APPENDICES TO THIS REPORT

None

BACKGROUND DOCUMENTS

None

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By virtue of paragraph(s) 1, 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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