

# Appointments & Disciplinary Committee Agenda

To: Mayor Jason Perry (Chair)  
Councillor Lynne Hale (Vice-Chair)  
Councillors Jason Cummings, Patricia Hay-Justice (Substitute for  
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 March 2023 at 2.00 pm. Room 1.01 and 1.02 - Bernard Weatherill House, Mint Walk, Croydon CR0 1EA.**

Katherine Kerswell  
Chief Executive  
London Borough of Croydon  
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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 - 10)**

Part A Minutes (including any element of Part B meeting where the minutes have been made Open) of the Appointments & Disciplinary Committee held on 23 February 2023

**4. Accountability in Local Government (Pages 11 - 26)**

**5. FAIRFIELD HALLS KROLL INDEPENDENT INVESTIGATION REPORT (PART A) (Pages 27 - 38)**

**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 (Pages 39 - 326)**

**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 (Part A) (Pages 327 - 330)**

**8. 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 of Schedule 12A of the Local Government Act 1972, as amended.”

**9. Part B Minutes of the Previous Meeting (Pages 331 - 336)**

Part Part B Exempt Minutes of the meeting held on the 23<sup>rd</sup> February 2023

10. **FAIRFIELD HALLS KROLL INDEPENDENT INVESTIGATION REPORT (PART B)** (Pages 337 - 338)
  
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 (Part B)** (Pages 339 - 348)

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## Appointments and Disciplinary Committee

Meeting held on Thursday, 23 February 2023 at 10.00am 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, Stuart King, Enid Mollyneaux and Callton Young

**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  
Stephen Lawrence-Orumwense – Director of Legal Services & Monitoring Officer  
Adrian May, Head of Democratic Services & Scrutiny  
Dean Shoesmith, Chief People Officer  
Simon Trevaskis, Senior Democratic Services & Governance Officer

#### 1. 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.

In the interests of transparency, it was confirmed that the following committee members had been interviewed by Richard Penn as part of his investigation; Mayor Jason Perry, Councillor Jason Cummings, Councillor Stuart King and Councillor Callton Young.

It was also noted that the Labour Party members on the Committee had received a letter yesterday on behalf of individuals named in the process. The letter had been shared with the Monitoring Officer for his consideration and it would be shared with others on the Committee during the closed session of the meeting.

#### 2. Part A and Open Part B Minutes of the Previous Meeting

The Part A and Open Part B minutes of the previous meeting held on 9 November 2022 were agreed as a correct record.

#### 3. Consideration of the Publication of the Independent Investigation Report by Richard Penn

The Committee considered a report set out on pages 9 to 14 of the agenda regarding the potential publication of the Independent Investigation Report by

Richard Penn. The report was introduced by the Chief Executive, during which the following statement was provided.

‘Today is an important milestone in the work of this committee in its handling of the Penn report since it was received by the Council in February 2021, two years ago to this month.

To aid the committee in its deliberations today I would like to address a few questions in regard to the Penn report and the work this committee has done to date.

Question 1. – How did the Penn report come into being and what was its’ purpose?

In the autumn of 2020, there was significant anger amongst residents and staff on a range of issues, such as the settlement payment made to the former Chief Executive, the Government’s rapid review team was working in the Council to assess whether commissioners should be sent in, the first of two Reports in the Public Interest (RIPI) was issued by the external auditor, the most serious public reports a council can receive and the first of three Section 114 notices was published.

The Penn report emerged from discussions between the Local Government Association and I, and then with the former Leader of the Council.

The discussions were focused on understanding how and why things had happened at Croydon that had been laid out so clearly in the first RIPI and from that understanding, how best to develop the Croydon Renewal Plan, and how to deal with the growing clamour for accountability, in a fair way with proper process.

The idea of an independent report conducted by one of their most senior and experienced advisors was finalised, Richard Penn was suggested by the Local Government Association (LGA) and the LGA agreed to pay for it.

I sent an email to the Executive Leadership Team (ELT) informing them there was to be a recommendation in regard to the Penn report in the Council report on the first RIPI.

This email explains the purpose of the report and I will read some of it in full as I believe it is helpful to establish clearly the purpose of the report we are considering today.

“As you know the Report in the Public Interest has raised a significant number of concerns that relate to both member and officer practice over ...

“...As I am sure you appreciate, this process is critically important in order for us to be able to move forward as a Council. We need to have an understanding of not just what happened before, but why and how and what was the prevailing culture and environment then.

There is a clear need for the Council to establish a culture of accountability. This investigation plays a part in beginning to bring that new culture into a reality.

I want to be clear this is not about placing blame for what has happened. This is about seeking a better understanding of what has happened and most

importantly why, so we can change the way this Council operates for the better.

If there are issues which come to light during these interviews that raise a more formal question to be answered, then that will be approached through the separate proper processes.”

So, I hope it is clear to the committee the report was always intended to be about building understanding. We knew what had happened from the RIPI but not how or why.

The communication is clear throughout that if there were questions raised then that would happen through other formal separate processes.

Question 2. How were the terms of reference developed?

The terms of reference were discussed between Richard Penn, the then Director of Human Resources and I. A final draft was shared with the Executive Leadership Team. A meeting was held with ELT to discuss the terms of reference with the Director of Human Resources and I and then the final version was issued.

Communication was sent to all staff with the terms of reference and inviting anyone to come forward for interview or submit written comments and /or documents and to contact Richard Penn directly if they wished.

In total 64 people were interviewed, employees, elected members and those external to the Council with a written note of each discussion provided and agreed as an accurate record before inclusion in the report.

As well as interviews, Richard Penn also drew on other reviews such as the RIPI, the Non-Statutory Rapid Review, and the PWC Review of the Council's Companies and other liabilities.

Question 3. What has this committee done in relation to the report?

One of the recommendations of the Penn report was immediately acted upon in that the Appointments Committee gave formal consideration as to whether the concerns raised in this report warranted any further proceedings to be commenced in line with the JNC disciplinary code.

The Appointments Committee met in March 2021. It received several representations from the parties commented upon in the report as part of a “Maxwellisation accuracy” process. It formally considered the issues raised and questioned Richard Penn. Some of the issues in the correspondence before the committee today were initially raised and considered by this committee in that maxwellisation accuracy process at that March meeting.

The March 2021 Appointments Committee agreed to commission legal advice in regard to the former chief executive's settlement agreement and to defer taking action on the recommendations in the Penn report until the external auditor's value for money review of the Fairfield Halls refurbishment had been received.

Due to the complexity of the issues discovered. this value for money report became the second Report in the Public Interest. It was finally published nearly 12 months later on 26/01/22.

The value for money report into the Fairfield Halls refurbishment which became the second RIPI was presented at the February 2020 Extraordinary Council meeting. The then interim Monitoring Officer announced that an independent investigation into possible fraud and other misconduct in relation to the refurbishment had been commissioned. This work has been undertaken by Kroll, specialists in this area.

The April 2022 Appointments Committee agreed that any consideration of the March 2021 committee's deferred recommendations from the Penn report be further deferred until the Kroll report was received.

The April 2022 Appointments Committee discussed the issue of the publication of the Penn report. It was agreed that they could not publish the report while disciplinary processes were ongoing. The Committee did unanimously confirm its desire to publish if at all possible due to the considerable public interest.

Question 4 – Why has it taken two years to reach this point?

Two factors have caused this.

The time taken from the receipt of the Penn report in February 2021 to September 2022 was governed by the decisions of the committee to await the external auditor's Fairfield Halls report and then the Kroll report. The Kroll report is expected next month and will be presented to the next Appointments Committee for its consideration.

Consideration by the committee of the possible publication of the Penn report was governed by the timeline of the disciplinary process. That concluded in September 2022.

In the five months since then, the maxwellisation process for publication has been underway and significant work has been undertaken to ensure all comments received from the interested parties have been considered in detail.

Whilst the time since September 2022 has taken longer than wanted, I know the committee appreciates that the requirements for full and proper process to be undertaken must be met. Professional skill and care have been applied to this process and external advice taken from leading counsel.

Conclusion

This Committee meets at a time when the public interest in the Penn report has never been higher.

Although it has been two years since the Council received the report, it remains just as relevant.

It is vital for building that shared understanding of how and why things happened that led to our governance and financial crisis and three section 114 notices.

There is widespread and national interest in the situation at Croydon. Indeed, such has been the level of national interest, the Council was the focus of a dedicated House of Commons Select Committee meeting.

The report if it is published, will make clear from the triangulated strength of honest opinion that concerns can be raised over the actions, the in-actions and the conduct of individuals such as, misjudgments, and actions which led to an absence of adequate budgetary controls, and mechanisms for evaluating and agreeing asset investments, and that failures to advise members properly on the breadth and the escalation of risk placed the Council's core purposes in jeopardy, this was alongside systemic failures of internal controls and finally, a failure to stop a corrosive top-down culture of what is commonly described, as over-controlling and bullying.

This Committee has long respected the public interest in publishing this report if at all possible and equally the need to ensure proper accountability processes for those responsible.

The Committee has been advised previously of the need to properly consider the legal issues arising and the risk of litigation.

These matters will be explored in full in the private part of this meeting. All correspondence received has been shared with this committee.

My final comment is to reflect on the discussion a number of us shared with leading counsel.

That in the light of the circumstances of Autumn 2020, the commissioning of the report was entirely understandable and the right thing to do.

The use of Richard Penn to author the report with his personal expertise and many years of experience was the right thing to do.

The question of whether to publish the report now lies with you as a committee.

Leading counsel has advised, your decision must be based on what is the right thing to do because of the great and legitimate public interest.

The question to answer today is what is the right thing to do – to publish or not to publish?

My role as the principal policy adviser to this Committee is to offer members advice on the matter before them today.

So my advice therefore; is that the right thing to do in the public interest is to support the recommendation to publish the Penn report.'

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

**Resolved:**

- i. The Committee agreed to consider the Maxwellisation responses received from the interested parties appended at Exempt/Part B Appendices 3 to 7 to the Exempt/Part B report, and the subsequent correspondence received since the publication of the agenda;

- ii. The Committee agreed, having considered the Maxwellisation responses, that there was a need for eight appropriate targeted redactions to the main report. None of the redactions comprised of more than a sentence and in some cases were only a few words. The Committee also agreed to redact the list of interviewees, as set out in Appendix 3, in order to maintain anonymity;
- iii. Subject to the above redactions, the Committee agreed to publish the Penn report because of the great and legitimate public interest for the reasons set out in the Exempt/Part B report;
- iv. The Committee agreed to note the following next steps:
  - a) Following the Committee's decision to publish the Penn report, with 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.

#### **4. 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 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]**

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

The part B minute of the meeting held on 9 November 2022 were agreed as a correct record.

#### **6. Consideration of the Publication of the Independent Investigation Report by Richard Penn**

*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 1.30pm*

# Agenda Item 4

## LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>Appointments and Disciplinary Committee</b>	
<b>DATE OF DECISION</b>	<b>23<sup>rd</sup> March 2023</b>	
<b>REPORT TITLE:</b>	<b>Accountability in Local Government</b>	
<b>CORPORATE DIRECTOR / DIRECTOR:</b>	<b>Katherine Kerswell Chief Executive</b>	
<b>LEAD OFFICER:</b>	<b>Katherine Kerswell Katherine.Kerswell@croydon.gov.uk</b>	
<b>LEAD MEMBER:</b>	<b>Mayor Jason Perry</b>	
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>NO</b>	<b>Public</b>
<b>WARDS AFFECTED:</b>	<b>All</b>	

### SUMMARY OF REPORT

1. This report seeks to describe the current system of accountability in local government to inform the committee's deliberations on the decisions before this committee today and to ensure that all avenues of holding those responsible have been fully considered and taken account of.
2. To date, Croydon Council has implemented the decisions of this Committee in initiating disciplinary action against the conduct of the 2 remaining chief officers. Subsequently they both resigned before the disciplinary processes were concluded and a hearing held. Formal complaints were presented against the conduct of two elected members who resigned before the disciplinary process could be concluded. The commissioning of the Kroll report has enabled an evidentiary report to be produced that can be considered in regard to other forms of redress.
3. In general, accountability in local government is institutional. Most usually, residents hold Councils to account through well-known processes of review, remedy and redress. These range from referrals to Ombudsman for investigations about maladministration or, more seriously, maladministration with injustice, to judicial review in the courts if it is alleged that the Council acted unlawfully, irrationally or without fair and proper procedure. But addressing the conduct of individuals (Members or officers) is more complicated, as the routes for attaining accountability for individuals lies principally in the electoral process (for Members), and in established frameworks of professional and managerial accountability (for officers). Accountability is

exercised through the ballot box for councillors and the Executive Mayor, and they 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 are considered insufficient. Accountability for officers is exercised through the employment contract where officers can be appointed, disciplined and also 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 wrong-doing provided.

4. There is bound to be disagreement and challenge to Council decisions and actions. This includes for Croydon those decisions and actions that involve investing public resources in local housing and infrastructure. Generally, these disputes occur before the event, and focus on the intent of some strategy and its prospects for success. But in Croydon's case, the 'call for accountability' has largely developed after the event and arises from the financial consequences to the Council and its residents of a series of imprudent actions and the conduct of individuals actions from 2014 to 2020. Of course, the Council is accountable corporately for the consequences of the failure of its investment strategy. The issue to be addressed is the extent to which individuals (Members and officers) can be held accountable. In practice, this is very difficult, as doing so would require a forensic understanding of the interplay between individuals and how this established or reflected the corporate culture of the organisation at that time.
5. In its examination of Council failures, the Department for Levelling Up, Housing and Communities (DLUHC) concludes that, "one common characteristic of recent statutory and non-statutory interventions is weaknesses in the local authority's culture and governance."<sup>1</sup> This was echoed as a finding for Croydon on the first RIPI.
6. Teasing out the respective contributions of individuals over 6 years to the creation of a weak corporate governance culture, in a proper evidential basis, is extremely difficult. The council has had two reports in the public interest and the Penn report amongst others which set out to describe the events and the different roles individuals played. The Council has most recently commissioned an independent investigation by forensic auditors, Kroll. The Kroll report is the most detailed forensic examination of past conduct by Members and officers on the refurbishment of Fairfield Halls; its findings are reported separately to this Committee (on the Part B agenda).
7. 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 claim that poor conduct should not be rewarded, and that people should be held to account for the damage to Croydon's services and finances. But while the call for accountability is 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.
8. This report therefore seeks to lay out the current landscape of accountability for local government and the options available to members in order that the public interest has been properly considered and given its due weight and attention.

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<sup>1</sup> DLUHC (2020) *Addressing cultural and governance failings in local authorities: lessons from recent interventions*

9. 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 national debate is developing as to whether the current accountability framework has sufficient safeguards for local taxpayers and residents. A recommendation will be proposed for the committee to consider in regard to this developing national debate.

## **2 RECOMMENDATIONS**

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

**2.1** 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.

**2.2** note that the consequences and associated costs of such conduct and the accountability processes themselves are borne by Croydon residents.

**2.3** 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.

**2.4** agree 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.

**2.5** agree 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.

**2.6** agree 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.

## **REASONS FOR RECOMMENDATIONS**

- 2.5** The Council has been the subject of unprecedented governance and financial crises as a consequence of the conduct and decisions of elected members and senior officers.

- 2.6 The Council's Chief Finance Officers has had to issue three separate Section 114 reports over the last three years.
- 2.7 The Council's external auditor Grant Thornton has issued two separate Reports in the Public Interest that are extremely critical of the Council's governance arrangements relating to its finances.
- 2.8 The Council has had to request extraordinary financial support from the government to the sum total of £369m in order for the Council to be financially sustainable. This has resulted in a 14.99% Council Tax rise to all households in Croydon, as well as an incredibly straitened budgetary position for the Council currently and for the next few years.
- 2.9 The Council has had to formally request the Government to consider a debt write off of £540m and other measures to enable the council to have a sustainable budget due to the annual £66m cost of servicing the £1.3 billion general fund debt.
- 2.9 There have been a considerable number of calls from within the Council (staff as well as Members) and residents for people to be "held to account" for their past decisions and actions. The Committee has expressed its intention to properly and fairly hold those responsible for these circumstances to account.

### 3. BACKGROUND AND DETAILS

- 3.1. The governance and financial crisis that Croydon Council has experienced is unprecedented in the Council's history. This has led to the extraordinary position where the Council has had to request borrowing approval from Government for £369 million in total and debt write off of £540 million.
- 3.2. In November 2020, and for the first time in 20 years, a London Council - Croydon, had to issue a Section 114 notice, which became the first of three such notices. Again, a situation without precedent in local Government.
- 3.3. The Council received two formal 'Reports in the Public Interest' (RIPI, October 2020 and January 2022) from Grant Thornton, its external auditors. These are the most seriously critical reports that external auditors publish about the conduct of the public body they are auditing. The first RIPI, in October 2020, concluded that **"there has been collective corporate blindness to both the seriousness of the financial position and the urgency with which actions needed to be taken."**
- 3.4. The second RIPI in January 2022 concluded, **"The Council's historical arrangements failed to ensure the legality of the arrangements for the project and allowed governance gaps which prevented monitoring of the project, oversight, and wider scrutiny and challenge that may have allowed corrective action to have been taken. Throughout the project there were individuals with both the knowledge of the many issues with the project and who had duties and responsibilities which we would expect to require action to address the known issues. The lack of appropriate action, in our view, represents a failure."**
- 3.5. The financial crisis meant that an initial submission to DLUHC to request extraordinary financial support of £150m was necessary. A total of £67m was required immediately to cover the

overspending in the 2020/21 financial year. Three further sums of £50m for the financial year 2021/22; £25m for this financial year; and then £5m for 2023/24.

- 3.6. Over the last 6 months, the Mayor's 'Opening the Books' programme has enabled the Council to examine the Council's finances in even more detail. This has uncovered further significant failings in past practice and conduct. This has resulted in another request for extraordinary financial support of £224m.
- 3.7. Therefore, in total Croydon has had to request additional borrowing powers to the sum of £369 million.<sup>2</sup> The Council also has a general fund debt position of £1.3 billion, with very little assets available to clear that debt, and a large amount of which is unsupported by asset holding. For 2023/24 financial year, this debt will cost £66million to the Council's revenue budget. The debt levels are an intentional consequence of the then previous Treasury Management Strategy which planned to increase the council's debt to over £2billion by this financial year. Without government resolution for this debt, the council will never become financially sustainable.

## Accountability

- 3.8. There have been a considerable number of calls from within the Council (staff as well as Members) for people to be "held to account" for their past decisions and actions. This is understandable. Staff know that should they breach Council policy, or act in ways that waste public money, that they are likely to be subject to management discipline. Worse they could lose their jobs and find that their careers are blighted. It is then entirely understandable for staff as well as residents to ask - should those whose past decisions and conduct have resulted in a £369 million hole in the council's budget and £1.3 billion of debt receive no apparent sanction? These questions hit to the heart of accountability in public life. But working through the issue of accountability in local government is not at all straightforward.
- 3.9. According to the *Oxford Handbook of Public Accountability*,<sup>3</sup> "the idea of accountability is rooted in the practice of book-keeping and in the discipline of accounting. Accounting always has a dual meaning: it is about listing and counting important "things" - possessions, debts, agreements, promises - and about providing an account concerning this count. Thus, it implies telling a story, based on some obligation and with some consequence in view."
- 3.10. In economic theory, accountability is often described through the "principal - agent model" where a principal provides money to an agent in exchange for the provision of a service - usually through some form of contract for service. The principal then holds the agent to account through, say, requiring regular reports on activities, performance and outcomes. If the principal considers that the agent has not satisfactorily delivered the performance expected, they can (subject to proper lawful process) void the contract and find an alternative agent.
- 3.11. This straightforward theory is, of course, complicated when it comes to the practice of what actually happens in modern economies. First, agents will often appoint sub-agents to perform the expected functions; and sub-agents may then appoint sub-sub-agents to fulfil specialised

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<sup>2</sup> The final tranche of £5m the December DLUHC submission for £150m is incorporated within the additional sum of £224m requested in January 2023

<sup>3</sup> Bovens M, et al, eds (2014) *The Oxford Handbook of Public Accountability*

elements of these functions. This can create a long “chain of accountability” from the original principal to the final agent. One solution to this problem is to incorporate all these agents within the boundary of an organisation - so that the overall contract for performance is one based on employment and not on a contract for service.

- 3.12. The principle of this approach was established in the late 1930s by Ronald Coase.<sup>4</sup> He argued that where the cost of transacting with others becomes so high and/or costly to manage, firms will respond by employing people directly. In this way accountability through service contracts is replaced with accountability through employment contracts. Of course, in market economies, where there is competitive rivalry between firms for customers for their products or services, the mechanism of accountability is open competition and the ability of customers to choose alternative providers.
- 3.13. In the government and public sector, citizens and taxpayers cannot usually ‘exit’ from public provision - more often than not, public service has the characteristics of a ‘monopoly’. Residents may be able to go to a library, a park or a swimming pool in another borough, but they can’t get their planning application determined by another Council or pay their Council Tax to another Council. As a result, in the government and public sector, accountability is exercised through ‘voice’ and claims for review, redress and remedy.<sup>5</sup> Moreover, any ‘chain of accountability’ is long.
- 3.14. The ‘principal’ in the public sector accountability chain can be viewed as the public, the taxpayers and the electorate. Their agents are those whom they elect to govern: Members of Parliament, a directly elected Mayor or elected councillors. They then become the public’s principals - for it is they (the MPs and councillors) who oversee the delivery of public functions and services. In local government it is the councillors who choose between different priorities and competing claims. But these principals (such as the Mayor or councillors) do not act directly. They engage agents, the senior officials, to advise them and to implement their decisions. These senior officials are not cyphers of the politicians who appoint them (i.e., merely their agents) but are independent and impartial - they are professional and principled agents. These senior officials then engage yet others - through employment contracts or through service contracts to perform the Council’s duties and to secure cost-effective services and public infrastructure investment. The routes to achieving accountability therefore involve democratic and organisational mechanisms, as well as professional and managerial mechanisms.
- 3.15. When it comes to local government there are five inter-connected layers of accountability:
- (1) democratic accountability of elected councillors to the electorate;
  - (2) political accountability within Councils through processes of overview and scrutiny, as well as through audit committees and ethics panels;
  - (3) accountability between the political executive (the Leader and Cabinet as was, and now the Mayor and Cabinet) and the Council’s statutory and chief officers. These officers help the political executive pursue their agenda, while also being accountable to all councillors;

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<sup>4</sup> Coase R (1937) *The Nature of the Firm*

<sup>5</sup> Hirschmann A (1970) *Exit, Voice and Loyalty*

(4) managerial accountability between these senior officers and other officers that report to them; and

(5) contractual accountability from the Council to those companies delivering functions and services through service contracts.

3.16. Generally, the call for greater accountability occurs, after the event, when things have gone wrong. It is also, understandably, focused on the conduct of individuals and the extent or degree to which their conduct acted as a causative contribution to some overall failing. However, analysing why things went wrong is rarely simple - discovering the precise root causes as to why things went wrong, can be very complicated, especially when this is a failure of governance and corporate culture.

3.17. Things can go wrong for many reasons. A particular strategy may be unrealistic or unaffordable from the outset. A sensible strategy may be rendered undeliverable by unforeseen or unforeseeable events. An over-zealous pursuit of a strategy without sufficient regard to practicalities, risks and consequences is not uncommon. Moreover, the motivations of the decision makers and those who advise them may be wholly irrelevant to the success of these decisions. Decisions made in good faith for proper purposes can nonetheless be poor decisions if they are not lawful, nor deliverable, nor prudent.

3.18. Usually, it is not because people want to make wrong decisions, rather they consider the decisions they are making are correct. They simply disregard the potential adverse consequences of their proposed actions while developing an irrational optimism that what they are doing will produce the results they intend. Being confident is the right route to success but being over-confident is the root of failure.

3.19. In choosing ways forward, there are two main types of strategic error:

- Type 1 error - **failure of foresight**. This occurs when decision makers choose to do something that subsequently proves to have been the wrong choice
- Type 2 error - **benefit of hindsight**. This is when decision makers choose not to do something that looking back, would have been the better choice

3.16. But a detailed examination of why things went wrong in any particular instance requires a more nuanced and evidenced analysis. How can the relative causative contributions to failure be parsed between the key actors concerned; between, say, the politicians who decided on a course of action or the officials who recommended the options for a course of action, or who failed to provide the appropriate advice on the action? And, at a broader level, was the chosen strategy broadly correct but very poorly implemented; or was the strategy chosen without proper consideration of alternatives? Finally, was the strategy chosen without regard to wider corporate responsibilities. For example, in local government, with multiple functional responsibilities, strategic errors in one domain (whether in decisions about child safeguarding or commercial investments) can subsequently have significant consequences for the future of many or all other Council functions.

- 3.17. It has become a near convention in respect of service failures in local government, for regulators to refer to “missed opportunities to intervene” to prevent an unsatisfactory position getting worse. This approach, of counting the number of such missed opportunities, began some thirty years ago in child protection and safeguarding case study reviews. But recently it has been more widely applied, or inferred, when organisations are said to have “blinded themselves” to bad practice across their organisations - especially when toxic behaviours of senior leaders, such as bullying foment dysfunctional relationships. In these cases, the number of instances are not counted but conclusions are drawn from the evidence of an overall pattern of behaviour. That noted, it remains the case that these issues are easier to assert than to hold to account.
- 3.18. Historically, the main discussions about accountability in government have centred around Ministerial decision making and Parliamentary processes. These have arisen from public interest scandals and judicial investigations into Parliamentary process, as well as from Ministerial and civil servant protocols.<sup>6</sup> Mostly, these have arisen over concerns about the accountability of Ministers to Parliament. From time to time, they have also centred on the role of senior civil servants in advising Ministers. This is mentioned here as there are important constitutional differences between senior civil servants and senior local government officers.
- 3.19. The Ministerial code explains the role of the 23 heads of Government departments and the 40 chief executives of its ‘executive agencies’ as - accounting officers. In the relevant section, it says that the role of the accounting officer is:

*“a personal responsibility for the propriety and regularity of the public finances for which he or she is responsible; for keeping proper accounts; for the avoidance of waste and extravagance; and for the efficient and effective use of resources. Accounting Officers answer personally to the Committee of Public Accounts on these matters, within the framework of Ministerial accountability to Parliament for the policies, actions and conduct of their departments.*

*Accounting Officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and more broadly as to all considerations of prudent and economical administration, efficiency and effectiveness and value for money. In line with the principles set out in [Managing Public Money](#), if a Minister in charge of a department is contemplating a course of action which would involve a transaction which the Accounting Officer considers would breach the requirements of propriety or regularity, the Accounting Officer will set out in writing his or her objections to the proposal, the reasons for the objection and the duty to inform the Comptroller and Auditor General should the advice be overruled.*

*If the Minister decides nonetheless to proceed, the Accounting Officer will seek a written instruction to take the action in question. The Accounting Officer is obliged to comply with the instructions and send relevant papers to the Comptroller and Auditor General. A similar procedure applies where the Accounting Officer has concerns about whether a proposed course of action offers value for money. This notification process enables the Committee of*

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<sup>6</sup> The 1954 Crichton Down Affair led to the first thorough examination of Ministerial accountability to Parliament. Since then there many investigations have been conducted. The current position is set out in the Ministerial Code: <https://www.gov.uk/government/publications/ministerial-code/ministerial-code#ministers-and-civil-servants>

*Public Accounts to see that the Accounting Officer does not bear personal responsibility for the actions concerned.”*

- 3.20. Constitutionally, this is quite different to the role description for statutory officers in local government. First, local government officers do not give advice to the political executive under anything comparable to the cloak of Ministerial privilege.<sup>7</sup> Their advice, whether orally or in writing, is available to all members of the Council. Second, and especially in respect of the chief financial officer and the monitoring officer, their powers are stronger in relation the control of finances and to propriety in decision making. Senior local government officials do not set out their professional views, for them to be set aside or over-ridden by a written instruction from the Leader/Mayor nor Cabinet Member. Instead, the Council’s most senior statutory officers have clear responsibilities and a constitutional personality that reflects statutory regulations and the Council’s constitution. Members can decide on a course that isn’t recommended to them by officers, but only if it is lawful, deliverable and affordable.
- 3.21. In Croydon, part of the conduct failures that have been described in the second RIPI relate to the appropriate exercise or not of the duties of statutory officers, most particularly the Section 151 Officer and the Monitoring Officer. There is an important consideration in improving accountability processes in local government as to whether any formal assurance of the performance of those officers who undertake such an essential safeguarding role in the governance of a local authority is needed.
- 3.22. This constitutional difference is further illustrated by the fact that Councils are a singular and unified corporate entity. The housing department, simply by way of example, cannot be sued for negligence by its tenants, but the Council certainly can. And likewise, no individuals (whether Members or officers) may be subject to judicial review - but the Council may be corporately. Whereas Ministers can be subject to judicial review if their decisions are found to be illegal, procedurally unfair or irrational.<sup>8</sup> This does not mean that instances of negligence or breach of trust arising from poor conduct of individual officers are always made corporate - gross negligence in respect of, say, health and safety legislation can lead to heavy personal consequences (up to imprisonment) for those concerned.
- 3.23. At the personal level, policy accountability in local government can involve ‘giving an account’ of what an individual has done, has advised or is proposing to do. This ‘giving an account’ involves describing or explaining individual actions and conduct. ‘Being held to account’ is different. In respect of policy implementation, officers of the Council ‘give an account’ to all councillors, but they are ‘held to account’ by the Executive. That is because only the political executive (and those few Council-side committees like planning and licensing) can stop implementing existing policy or start implementing new policy.

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<sup>7</sup>The Armstrong Memorandum describes the duties and responsibilities of civil servants in relation to Ministers. They are often referred to as the ‘Osmotherly rules’, after the author, a senior civil servant, who wrote them in 1980. They were amended in 1996 and again in 2014.

<https://erskinemay.parliament.uk/section/4569/ministerial-accountability-to-parliament/>  
<https://www.instituteforgovernment.org.uk/article/explainer/ministerial-accountability>

<sup>8</sup> Decisions by public bodies can be judicially reviewed on grounds of illegality, procedural unfairness or unreasonableness/irrationality. Judicial Review and Courts Act 2022

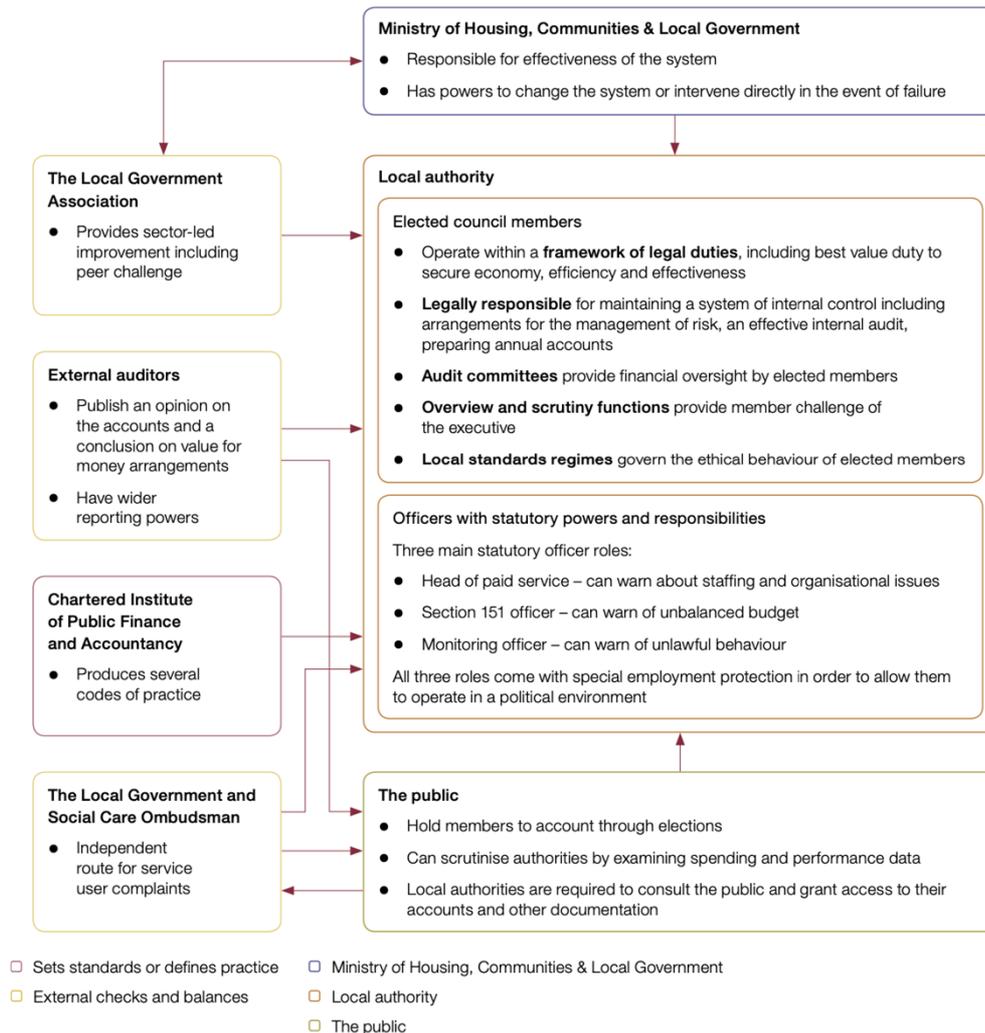
- 3.24. More importantly, in local government, accountability is usually made corporate, or institutional, by the fact that as a public body it is indivisible. But the other side of the coin to accountability, is responsibility. Individuals have responsibilities for things as well as accountabilities to others. Generally, individuals are responsible for things today and tomorrow, while they are accountable to others for what they did yesterday. This usually implies being accountable for failings or failures. Failure is an intrinsic and unavoidable aspect of human life, let alone public affairs. You can only progress by learning from failure. But in public authorities it is best to learn before small failings become enormous failures. Small failings can beget bigger failures or they can accumulate into massive failures. Errors, mistakes and failings should be subject to Council systemic learning. What is required are appropriate management controls (at all levels) and high quality risk management arrangements. But this requires an open, inclusive, creative and disciplined organisational culture that is built on learning and measured risk taking.
- 3.25. The Overview and Scrutiny and the Audit Committee function within local government constitutions play an important role in holding to account members and officers for their decisions and advice. However, as the Kroll report and the RIPI's reveal, those committees can only perform that function if information is provided to them as requested and officer advice is fully and freely given. The webcast records show that scrutiny members at Croydon did raise important questions about the matters which led to the financial crises at Croydon, but these were not fully answered.
- 3.26. If members and officers have concerns, there is of course the council's whistleblowing policy which is independently run at Croydon. However, if the overriding culture is one of fear and bullying, confidence in the confidential use of such a process is usually low. There are external avenues also available such as a referral to the Local Government Association or to the External Auditor, or even DLUHC but these are not widely understood.
- 3.27. Local government contains many professional subject experts; and these professionals owe their responsibilities to service users, to service advocates, and to the public interest - not simply to their direct line manager nor to the Cabinet Member who has political responsibility for the function in which they work. People should take their personal and professional responsibilities very seriously - for its their responsibilities of today, that determine the character of their accountability tomorrow.
- 3.28. The most senior local government professionals such as the chief executive, the chief financial officer and the monitoring officer, have serious and significant responsibilities to ensure the proper governance and management of the authority. Leading Members may hold strong opinions on, "what should be done, when and how". But its' the role of officers to ensure that decisions are made properly; that resources and assets are well managed; and that services are sustained in cost-effective ways. Councils are almost entirely free to determine what they should do - as long as that is within the bounds of the law and the envelope of the resources available.
- 3.29. In summary, and at the broadest level, the Council is democratically accountable to the public it serves through the discipline of the ballot box - the electoral process. Of course, public accountability does not happen once every four years. Throughout their time in office, Members are accountable to the public continually through a range of processes that ensure openness, transparency and disclosure. But this accountability of councillors is supported by the professional and managerial accountabilities of Councils core statutory officers.

## Assurance

- 3.30. Compared to Government and to other public bodies, local government is arguably the most open, transparent and accountable. Unfortunately, that doesn't mean that all actions by all Councils are equally open, transparent and accountable. But generally, it is the case that local government leads the way on transparency. The vast majority of local public interest decisions are made in open meetings, with professional advisors and Members open to challenge and criticism.
- 3.31. Since 2010, the approach to assuring quality standards in local government services has been through sector-led self-improvement rather than through regulatory inspection and assessment (saving Ofsted, the Care Quality Commission and a few others). The Local Government Association (LGA) has set the pace for corporate peer challenges amongst Councils as well as for service specific peer challenges. In addition, across London there has been an approach to sector-led improvement which has involved leading Members, Chief Executives and service Directors. Chief financial officers across London have also provided professional and technical support to Councils who have been operating in very straitened circumstances.
- 3.32. This 'assurance' approach is both general and generalised. It is not hard-edged accountability that focusses on individuals' performance, but broader assurance about institutional performance. Assurance involves the provision of information and evidence by a body to assure others that it will achieve its goals and targets. It usually takes the form of rounded metrics on overall performance against targets. Assurance reporting is becoming a regular feature of public body reporting, although some (especially NHS trusts) focus more on re-assurance reporting. These re-assurance reports are produced to address particular doubts and concerns about aspects of organisational performance.
- 3.33. Re-assurance reports involve more qualitative insight from clinicians or expert professionals so as to re-assure those expressing these doubts and concerns. Few Councils produce assurance or re-assurance reports; and few produce 'impact reports' - that focus on the outcomes of their activities on the overall well-being of the communities that they serve. Instead, Councils tend to produce corporate risk registers, that identify the likely and most consequential risks to the achievement of their goals, and the management controls they have in place to mitigate these risks. It is usual practice to publish these risk registers openly and for Audit Committees to consider them, and not just the political executive.
- 3.34. The National Audit Office (NAO) produces reports, from time to time, on the overall governance and financial assurance of the local government sector. Their most recent whole system

assurance report was published in January 2019. In this report they produced the diagram below to illustrate the regulatory environment as well as the checks and balances on local government.<sup>9</sup>

Core local governance framework



**Notes**  
 1 Links with other departments and service inspectorates not shown.  
 2 There are other statutory roles in an authority but the three listed in the chart are our main focus.  
 3 Arrows show the main influences acting on local authorities' governance arrangements.

Source: National Audit Office analysis of Ministry of Housing, Communities & Local Government information

3.35. The diagram above provides the most up to date and comprehensive map of the accountability and assurance mechanisms to which local government is subject. In early March 2023, the LGA responded to a peer challenge of its own operations by suggesting, among other things, that it intended to strengthen its approach to local government improvement and assurance. A widespread review is about to be instituted by the LGA to help all Councils provide their public with a more comprehensive statement of their performance and the rate of their improvement as an organisation. This will be built on existing arrangements such as Annual Governance Statements, financial and performance reporting, as well as responses to regulators and Ombudsmen, etc.

<sup>9</sup> NAO (2019) Local Authority Governance, page 6

- 3.36. The Chartered Institute of Public Finance and Accountancy (CIPFA) is currently reviewing practice requirements for chief financial officers in local government and is also developing a resilience index to support the work of the new Office for Local Government (OfLog) which will itself produce a framework for improved financial and other reporting sector-wide.
- 3.37. In support of this LGA effort, the lead professional bodies are currently examining how best they can contribute to spotting problems and difficulties in Councils before they become troubling, disruptive and costly for residents. For the cost of error is borne not by the Council, nor by the professionals but by residents. Capitalising the cost of these revenue errors can only be done by applying for extraordinary capital borrowing permission from DLUHC. This borrowing is not spread across businesses and resident taxpayers - it can only fall on residents.

### **What options are available to hold individuals to account?**

- 3.38. Individual councillors are accountable principally to their electors. They are also accountable corporately to the Council through their agreement to conduct themselves in compliance with the LGA's model Member Code of Conduct and the Council's own locally adopted Member Code of Conduct based on the LGA code. Earlier approaches, such as 'financial surcharge' were replaced with the creation of standards committees within Councils. But the requirement for these standards committees was abolished in 2011 and the Standards Board for England was abolished in 2012. While complaints about Member conduct do arise from electors and others, it is also the case that alleged breaches of the Code of Conduct can often arise from complaints from other councillors. In 2022, the Government rejected a long-standing proposal from the Committee for Standards in Public Life to strengthen the sanctions for breach of the LGA's model Code. This means that the sanctions for individual councillors centre on their party affiliation (i.e. whether or not the party whip is removed from them); and also whether the Council formally removes the councillors concerned from Council committees - they cannot be barred from attending, participating and voting at full Council meetings.
- 3.39. For councillors who resign, there is no sanction available to the Council. The Ethics committee was beginning to respond to two formal complaints against elected members which ceased on their resignation. Wrongdoing could be also subject to consideration by the proper authorities such as the police and the crown prosecution service.
- 3.40. Individual officers are subject to management discipline - up to and including, dismissal. This Committee has had regard to these matters in respect of former officers - while they remained in the Council's employment.
- 3.41. Some of these members and officers also owe practice duties to their professional bodies. This is especially the case in respect of chief financial officers and to monitoring officers (where those monitoring officers are practicing lawyers). It is open to the Committee to consider referring the suite of reports to professional bodies and institutes as well as to the proper authorities, where appropriate.
- 3.42. Where officers have resigned and left the Council's employment, the Council can assert no employment-based sanction. This includes those core statutory officers as well as the wider group of chief officers.

- 3.43. Where the Council has suffered significant financial losses because of the wrongdoings of former officers and members, there is the possibility of a civil claim (tort) for misfeasance in public office. Misfeasance in public office is an action against a holder of public office. It provides a remedy for persons who are injured by the actions of a public officer who has exercised his powers in bad faith. It is an unusual tort in that the prime focus is on the motivation of the defendant. The ingredients of the tort a) The defendant must be a public officer; b) The defendant must have exercised power as a public officer and deliberately and consciously in order to give rise to liability; c) The defendant must have acted unlawfully and with malice or in bad faith, either with the intention of injuring the claimant or, being aware of the risk of such injury, without an honest belief that his conduct was lawful. The defendant must have been aware that his conduct was unlawful but recklessly ignored the risk; d) That conduct must have caused the claimant material injury or damage of a sort foreseen by the defendant. To bring a claim, the evidential threshold must be met, and there must be a reasonably good prospect of success and of award of damages for the financial loss suffered.
- 3.44. Where the wrongdoing could give rise to a criminal action (for example for misconduct in public office<sup>10</sup>) serious consideration should be given to referring the suite of reports obtained to the Metropolitan Police. Consideration should also be given to avoiding any actions that would potentially prejudice any Police investigation and decision on prosecution.
- 3.45. 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 the significant impact this has had on all residents which has led to the significant public demands for accountability.
- 3.46. Understandably, the expectation is that these demands can be met swiftly and cost effectively. In reality, the legal and other processes bearing down on councils in these situations are very costly, labour intensive, strongly contested, protracted and fraught with risk.
- 3.47. In these circumstances, councils have to manage litigation risks and threats of legal action and ensure due process is followed as well as the legitimate aims of transparency, public understanding and engagement and accountability. There is no doubt that councils should remain steadfast in pursuance of an overriding objective of doing the right thing but there are many challenges.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1. This report has set out the complications and the difficulties that will have to be addressed in attempting to successfully hold previous public office holders (members and officers) to account. It also presents a range of options for members to consider in regard to these complex issues.
- 4.2. The other option that is available for the Committee to consider is to not proceed with holding public office holders to account. Members will be aware of the public interest which accountability

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<sup>10</sup> Misconduct in public office is an offence at common law triable only on indictment. It carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office. The offence is committed when: a) a public officer acting as such; b) willfully neglects to perform his duty and/or willfully misconducts himself; c) to such a degree as to amount to an abuse of the public's trust in the office holder; and d) without reasonable excuse or justification.

for misconduct raises. Members will need to pay due regard to the public interest in taking decisions on this paper and others on this committee's agenda.

## **6. Contribution to Council priorities**

6.1. This report focusses on how the Council can be more accountable to the public and residents it serves - one of the Council's core priorities.

## **7. IMPLICATIONS**

### **FINANCIAL IMPLICATIONS**

7.1 There are no financial implications directly arising from this report.

7.2 Comments approved by Jane West Corporate Director Resources and Chief Finance Officer. (150323)

### **LEGAL IMPLICATIONS**

7.3 There are no legal implications directly arising from this report's recommendations.

7.4 Comments approved by Looqman Desai, Deputy Monitoring Officer, on behalf of the Director of Legal Services and Monitoring Officer. (150323)

### **EQUALITIES IMPLICATIONS**

8.1 There are no equalities implications directly arising from this report. However, as the main body of the report outlines, it is in the council's interests and in the public interest to ensure that those responsible for the council's financial situation and governance failures are fairly and properly held to account so that public trust and confidence can be restored. In holding people to account the council should ensure there is no bias, unequal or less favourable treatment on the grounds of one or more protected characteristics.

8.2 Comments approved by Dean Shoesmith, Chief People Officer. Date 15/03/2023.

### **BACKGROUND DOCUMENTS**

9.1 None



<b>REPORT TO:</b>	<b>APPOINTMENTS AND DISCIPLINARY COMMITTEE</b> 23 March 2023
<b>SUBJECT:</b>	<b>FAIRFIELD HALLS KROLL INDEPENDENT INVESTIGATION REPORT</b>
<b>LEAD OFFICER:</b>	<b>Katherine Kerswell, Chief Executive</b>
<b>WARDS:</b>	<b>All</b>
<b>PUBLIC/EXEMPT:</b>	<p style="text-align: center;"><b>PART A: Public with exempt appendices:</b></p> <p style="text-align: center;"><b>1. Kroll Scoping Phase Report and Detailed Investigation Plan</b></p> <p style="text-align: center;"><b>2. Kroll Report: Review into the refurbishment of Fairfield Halls</b></p> <p>Under paragraphs 1 (information relating to any individual) and 5 (information in respect of which a claim to legal professional privilege could be maintained in legal proceedings) and, in all the circumstances, the public interest in maintaining the exemptions outweigh the public interest in disclosing the information</p>

**SUMMARY OF REPORT:**

The purpose of this report is for the Committee to receive the Kroll independent investigation report into matters raised by the Fairfield Halls Report in the Public Interest published 26 January 2022.

The Kroll independent report has been subject to a Maxwellisation process in relation to 14 individuals named in the report.

**FINANCIAL IMPACT:**

There are no financial implications directly arising.

**RECOMMENDATIONS:**

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

- (i) Receive and consider the report of the independent investigation into matters arising from the Fairfield Halls Report in the Public Interest conducted by Kroll Associates (Kroll) **Exempt Part B Appendix 2 Kroll Report: Review into the refurbishment of Fairfield Halls**

and

- (ii) Agree that the Kroll investigation and report have achieved the objectives set and can be relied upon.

## 1. BACKGROUND

- 1.1 Most recently, the background to this matter was set out in a public and exempt/Part B report considered by the Committee on 23<sup>rd</sup> February 2023 in relation to the publication of the LGA 'Penn report' and previous updates provided to the Committee.
- 1.2 Many of the same themes and findings in the Penn report are mirrored in the Kroll independent investigation into matters arising from the Fairfield Halls Report in the Public Interest also appended to this report.
- 1.3 On 3 February 2022, at an Extraordinary Council meeting, the Council formally received a 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 'the project'.
- 1.4 The Council accepted the findings of RIPI 2 in full and agreed a comprehensive action plan to address the recommendations made by Grant Thornton, which is being led by the Council's Monitoring Officer.
- 1.5 Following receipt of RIPI 2 on 26 January 2022, the Monitoring Officer, at the Extraordinary Council meeting on the 3<sup>rd</sup> February 2022 *announced that he had asked that it be reviewed to identify any concerns or areas that needed further consideration from a fraud perspective in accordance with the Fraud Act;*"
- 1.6 Following the announcement by the Monitoring Officer at the Extraordinary Council meeting, further consideration was given by officers as to the mechanisms 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 'wrong doing' (including fraud) by way of an externally commissioned forensic investigation. This was based on capacity, expertise and independence considerations, which led to the appointment of Kroll Associates 'Kroll' to lead this investigation as detailed below.

- 1.7 Periodic updates have been provided to Members on this investigation including on 13 October 2022 and at a subsequent meeting of the committee on 23 February 2023.

*‘Two subsequent reports had paused progress on the original Penn Report. The first was the Report in the Public Interest (RIPI) on the Fairfield Halls refurbishment received from the External Auditor in February 2022. The second was the awaited report from Kroll .....The investigation to inform the outcome of the Kroll Report was complex and involved requests for information from many of the people involved at the time. The Council was pushing hard for the final report, but similarly to the Penn Report, it would also need to go through a Maxwellisation process.*

That Maxwellisation process has concluded, and Kroll have finalised their report as attached at **Exempt Appendix 2**.

## **2. INDEPENDENT INVESTIGATION: COMMISSIONING & TERMS OF REFERENCE**

- 2.1 The independent investigation referred to above was commissioned in two stages under Director and Corporate Director delegated authority respectively. 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, compliant with the council’s Tenders & Contract Regulations, 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 a detailed plan to investigate matters. The stage 1 report was designed to form a go/no go stage/gateway and allowed officers to fully understand what a forensic investigation would entail. Kroll were appointed for this exercise at a cost of £38,000, their stage 1 report is appended at **Exempt Appendix 1**.
- 2.2 Following receipt of this report and further detailed consideration by officers , it was determined to accept Kroll’s proposal by way of a direct award from the Crown Commercial Services framework to complete a detailed stage 2 investigation at a cost of £271,775.00, comprising £252,510.00 in investigation costs and a further £19,265.00 in data room costs, for the stage 2 project. The award was on the grounds of urgency, confidentiality, and the specialism of the provider to provide the outcome required.

### **Scope of the Report into ‘Wrongdoing’**

- 2.3 Specifically, Kroll’s professional advice was that in order for the exercise to have full value for the Council, that the investigation screened 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 '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'.

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

**Fairfield Halls Kroll Independent Investigation: Terms of reference information**

*'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'.*

- 2.5 Methodology. The approach to the investigation methodology applied by Kroll comprised of 3 main strands.
- a) Electronic document review. Bearing in mind that most key individuals had left the Council a review of email data focussing on key events helped Kroll to put together a timeline, and decisions made in relation to the Project and identify the decision makers and individuals involved.
  - b) Fact finding interviews. In conjunction with the review of electronic documentation, 50 fact-finding interviews with relevant individuals were requested. Response rates varied in respect of former officers and Members which depended on their willingness to co-operate. Where this was not the case, Kroll was able to draw factual conclusions based on email communications and other documentation reviewed.
  - c) External research. Lastly external research was conducted by Kroll as required, for example to establish the existence of any undisclosed associations.
- 2.6 To help Members to understand the complexity and scale of this investigation and resources deployed it is helpful to note that a total 636GB amount of data was supplied to and collated by Kroll as part of their investigation above. This data in total comprised 2,072,412 documents/files for analysis. The scale of

this investigation may be considered to give assurance about its thoroughness and the degree of reliance that can be placed on its findings. Following analysis of the data above a total of 50 key individuals were invited to interview by Kroll as part of their investigation. Details of this are contained in their report.

### **Process of interviews, discovery and evidence reviewed**

- 2.7 It was made clear in the invitation email and the terms of reference as above that the investigation was intended to build a better understanding of what had happened with the project (which had led to the failures identified in RIPI 2) and to produce an evidence-based report that could support the council in any follow up action deemed appropriate.
- 2.8 At the outset of each interview, all participants were reminded of the terms of reference for the investigation, the purpose of the investigation and why it had been commissioned. The 50 people who were invited for interview are listed at Appendix 16 of their report (Page 218)
- 2.9 In drafting their final report Kroll identified 14 key individuals named in their report to be afforded the right of reply by way of a Maxwellisation process. The Maxwellisation process commenced on the 17<sup>th</sup> February 2023 and concluded on the 3<sup>rd</sup> March 2023. 9 out of 14 individuals responded in some way to the Maxwellisation process.

### **3. Kroll Independent Investigation Findings Summary/Conclusions of report**

A full copy of the Kroll report is contained in **Exempt Appendix 2**.

- 3.1 The Kroll report is 260 pages long and the main body of the report is an evidence-based chronology of the project from 2014 to 2020 setting out key events including evolution of Brick By Brick (BBB) and Croydon Council (LBC), involvement of contractors, advisers and consultants, the project structure and budget, contracting/legal risks and governance of the project and key milestones in the progress of the project.
- 3.2 The Kroll approach and evidence-based output of the report is considered to have met the Project Brief/Terms of Reference. The independent investigation report sets out clearly the Kroll conclusions, with no outstanding lines of enquiry identified and therefore the report is considered complete.
- 3.3 The detailed chronology and methodology of the Kroll report identifies who was involved and, to the extent it can be verified/documented/evidenced, what they knew at the time. Whilst the Executive Summary itself is 50 pages long, the key findings and summary of the report have been broken down by Kroll as follows:

- Early discussions around the need for the refurbishment and capital allocations
- LBC's council-owned company and its appointment to the Project
- Development of Project budget, scope and estimated completion date
- Governance of the Project
- Reporting to Cabinet / Council

#### **4. Legal Considerations and Causes of Action**

- 4.1 Although not intended to be an exhaustive list, some of the legal causes of actions or legal standards against which the conduct, behaviours and activities reported by Kroll could be assessed are set out in an accompanying report to this committee.

#### **5. Surcharging (Sanction) Regime**

- 5.1 Whilst this report is not intended to reopen a debate about other sanctions previously available in situations faced by Croydon post RIPI 1 & 2, it is helpful to consider that prior to 2000 where public funds had been unlawfully spent, or a loss caused to a local authority through misconduct, a surcharge could be applied, after referral to a court by the Audit Commission. This provision was withdrawn following the third report of the Committee on Standards in Public Life, published July 1997

#### **6. Disciplinary Proceedings & Next Steps**

- 6.1 As reported elsewhere generally all those named and criticised in the Kroll report have left the council and therefore remedies against individuals generally fall outside of the disciplinary process.

#### **7. CONSULTATION**

- 7.1 In earlier paragraphs of this report the Maxwellisation processes undertaken for the benefit of the interested parties are explained.

#### **8. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

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

## **9. LEGAL CONSIDERATIONS**

9.1 The legal considerations and advice have been included in the main body of the report.

Approved by: Looqman Desai, Deputy Monitoring Officer

## **10. HUMAN RESOURCES IMPACT**

10.1 The human resources considerations and impact are covered in the main body of the report.

Approved by: Dean Shoesmith, Chief People Officer 13/02/2023

## **11. EQUALITIES IMPACT**

11.1 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.

11.2 “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.

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

Approved by: Dean Shoesmith, Chief People Officer 13/03/2023

## **12. DATA PROTECTION IMPLICATIONS**

12.1 These are discussed in the body of the 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:

- 12.1.1 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;
  - 12.1.2 collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
  - 12.1.3 adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed;
  - 12.1.4 accurate and, where necessary, kept up to date; and
  - 12.1.5 processed in a manner that ensures appropriate security of the personal data.
- 12.2 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”.
- 12.3 The Kroll 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.
- 12.4 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 13/03/2023

**CONTACT OFFICER:** Katherine Kerswell, Chief Executive

#### **APPENDICES TO THIS REPORT**

Exempt Appendices:

**Kroll Scoping Phase Report and Detailed Investigation Plan**

**Kroll Report: Review into the refurbishment of Fairfield Halls**

#### **BACKGROUND DOCUMENTS**

None

By virtue of paragraph(s) 1, 2, 5, 7 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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By virtue of paragraph(s) 1, 2, 5, 7 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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<b>REPORT:</b>	<b>Appointments and Disciplinary Committee</b>	
<b>DATE OF DECISION</b>	<b>23<sup>rd</sup> March 2023</b>	
<b>REPORT TITLE:</b>	<b>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.</b>	
<b>CORPORATE DIRECTOR / DIRECTOR &amp; LEAD OFFICERS :</b>	<b>Katherine Kerswell Chief Executive</b> <u><a href="mailto:Katherine.kerswell@croydon.gov.uk">Katherine.kerswell@croydon.gov.uk</a></u>  <b>Stephen Lawrence - Orumwense Director of Legal Services and Monitoring Officer</b> <u><a href="mailto:Stephen.Lawrence-Orumwense@croydon.gov.uk">Stephen.Lawrence-Orumwense@croydon.gov.uk</a></u>	
<b>LEAD MEMBER:</b>	<b>Mayor Jason Perry</b>	
<b>CONTAINS EXEMPT INFORMATION?</b>  <i>(* See guidance)</i>	<b>YES</b>	<p><b>Exempt Appendix A: List of referrals to professional bodies and institutes</b></p> <p><b>Under paragraphs 1 (information relating to any individual) and 2 (information which is likely to reveal the identity of an individual) and, in all the circumstances, the public interest in maintaining the exemptions outweigh the public interest in disclosing the information</b></p>
<b>WARDS AFFECTED:</b>	<b>All</b>	

## 1 SUMMARY OF REPORT

- 1.1 The purpose of this report is to offer advice to members in their consideration of two of the stayed recommendations from the Penn Report.
- 1.2 These recommendations were stayed by this Committee at its meeting in April 2022, until the receipt of the Kroll report.
- 1.3 The Kroll report is before this committee today and any consideration of the recommendations in the light of that report is subject to members' decision on that item.
- 1.4 Since the Penn report was issued to the Council in February 2021, there have been other reports published that cover similar issues. The advice to members in their consideration of these two recommendations will also draw upon those other reports; the two Reports in the Public Interest, the Non-Statutory Rapid Review, the PwC report into the Council's Companies and other liabilities, and the Kroll report.

## 2 RECOMMENDATIONS

For the reasons set out in the report the Appointments Committee is recommended:

- 2.1 to agree that the Penn report be referred to the Metropolitan Police for their consideration as to whether any further action is warranted.
- 2.2 to agree 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.
- 2.3 to agree 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.
- 2.4 to agree 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]
- 2.5 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.
- 2.6 to note that a meeting will be requested with the Metropolitan Police for the Mayor as part of the implementation of recommendations 2.1 and 2.2 above.

### 3 REASONS FOR RECOMMENDATIONS

- 3.1 The April 2022 Appointments Committee deferred consideration of these two recommendations until the Kroll report was received by the council. That report is on this committee's agenda today.
- 3.2 This committee has expressed its determination to address the remaining recommendations of the Penn report in full.
- 3.3 The public interest implications of the Penn report and its recommendations necessitates their formal consideration by this committee.
- 3.4 The Council has been the subject of unprecedented governance and financial crises because of the decisions, actions or omissions of elected members and senior officers. The impact is still being felt today and evidence by the request for extraordinary financial support from the government for the Council to be financially sustainable. See paragraphs below.
- 3.5 The various Reports that are referred to including the Reports in the Public Interest, Penn Report and Kroll Report clearly documents the fundamental failings and the financial implications for the Council. See paragraphs below. These Reports also raises serious concerns about the conduct of elected members and senior officers and that necessitates a referral to relevant authorities to determine whether any action should be taken against these individuals.

## **4 BACKGROUND AND DETAILS**

**4.1** The following reports independently document the detail of the financial and governance crisis of Croydon Council from approximately 2014 until the Autumn of 2020.

- The Report in the Public Interest (RIPI) published by Grant Thornton October 2020,
- The strategic review of council companies and other investment arrangements PwC November 2020,
- The non-statutory Rapid Review report from MHCLG February 2021
- The independent investigation report by Richard Penn February 2021
- Evidence given to the Local Government and Housing Select Committee March 2021
- Local Authority Financial Sustainability and the Section 114 Regime report of the Local Government and Housing Select Committee Houses of Parliament July 2021
- The Report in the Public Interest published by Grant Thornton in February 2022.
- The Kroll report March 2023

**4.1** The depth of that financial and governance crisis resulted in Croydon Council being the first London borough in over 20 years to issue a Section 114 notice. Appointments Committee will be aware that the Council has not only issued such a notice but has had to issue three; such is the severity of the Council's position.

**4.2** The first time this has happened in the history of English local government.

**4.3** This situation didn't 'just happen'. It arose from the conduct of those charged with governance, some of the Council's public office holders; its previous elected leadership, its previous statutory officers and some of its previous chief officers between 2014 until September 2020.

**4.4** The only resolution to the financial crisis faced by the Council was to seek borrowing approval initially of £150m from the Government. Following the Mayor's Opening the Books Programme, borrowing approval for a further £224m has had to be requested and has been approved.

**4.5** Due to the need to borrow large sums to cover its costs and balance the budget, the Council has had to make savings of £90m over the last two years. The budget passed on 8<sup>th</sup> March 2023 requires £36m more savings in the next financial year and an increase in council tax by 15%.

**4.6** The council's debt is unsustainable and will cost taxpayers £66m next year simply to service it. Discussions with the Department for Levelling Up, Housing and Communities will begin shortly on how this level of toxic debt can be permanently dealt with.

**4.7** In total the council has had to seek permission from Government to borrow £369 million pounds.

**4.8** Savings of the scale required by the council to make its budget sustainable and in balance cannot be achieved through trimming and slicing. Services have been subject to severe reductions, and as a result the services to the people of Croydon have worsened and suffered real detriment.

**4.9** The causal factors of this financial crisis were first drawn to the public's attention in October 2020, by a Report in the Public Interest (RIPI) by Grant Thornton, the Council's external auditors. This is one of the most serious steps an auditor can take. Around nine RIPI's have been published for upper tier councils since the introduction of the 2014 Local Audit and Accountability Act. Such is the seriousness of the situation; Croydon has had two of these reports.

- 4.10** Following that first RIPI, discussions were held with the External Auditor about the refurbishment of Fairfield Halls. This started out as a formal Value for Money report but due to the seriousness of the findings, it became the Council's second RIPI and was published in January 2022.
- 4.11** What has been outlined in those two RIPI's underscore the findings from the Government's Non-Statutory Rapid Review published in February 2020 which said, "*It is clear that Croydon Council has had significant failings in leadership and management (particularly in sphere of financial management) and its governance and assurance mechanisms have failed in identifying, escalating and addressing risk.*"
- 4.12** What occurred at Croydon has been very damaging to the Council's finances, its capacity to effectively perform its key public service functions and has seriously undermined the public trust and confidence in the Council.
- 4.13** As such the council's current elected leadership, the current statutory officers and the current chief officers of the council; those charged with governance, are duty bound to ensure that those responsible for this situation are fairly and properly held to account so that public trust and confidence can be restored.
- 4.14** **Accountability requirements at Croydon Council for public office holders and those charged with governance.**
- 4.15** Croydon Council is, to a degree, bounded in its actions by its duties and its powers as laid down in legislation. As public office holders, the elected members and employees of Croydon Council are equally prescribed as to the extent and limit of their actions and the expectations of their conduct. The courts have been reluctant to define what is meant by a public office holder and have stressed that each case must be considered individually, considering the nature of the role, the duties carried out and the level of public trust involved.
- 4.16** Both local authority councillors and local authority employees have been defined in case law as public office holders. The case law contains an element of circularity, in that the cases tend to define a public officer as a person who carries out a public duty or has an office of trust. What may constitute a public duty, or an office of trust must therefore be inferred from the facts of a particular case.
- 4.17** The definition of "those charged with governance" is clearer and is an important accounting term. "*The person(s) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process.*"
- 4.18** All chief officers and all local government officers employed by Croydon Council have personal accountabilities placed upon them in their job descriptions and in the Council's Constitution with clear expectations of their conduct. These are laid out below.
- 4.19** The relevant documents are:

- The Seven Principles in Public Life – commonly known as the Nolan Principles

- The Council's Constitution which contains,
  - the Officer Code of Conduct
  - the Financial Regulations,
  - the Member Code of Conduct and
  - the Protocol on Staff–Member relations,

#### **4.20 The Nolan Principles**

All public office holders are governed by the Seven Principles in Public Life – more commonly referred to as the Nolan Principles. These have been adopted by the Council and underpin the Council's Officer Code of Conduct. They are Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

#### **4.21 The Officer Code of Conduct** -The Council's Officer Code of Conduct states in its' introduction:

*"It is important that you are clear about what the Council expects from you in terms of how you carry out your work, behave, respect and treat your colleagues and members of the public. This Code sets out those expectations. Everyone who works at Croydon Council has a responsibility to our residents and those who use our services. That is why it is so important we ensure that we are doing the right thing and adhering to high standards of governance at the Council. We are accountable to the people who use our services and live within our borough and so it is vital that we conduct our business with honesty, transparency and accountability."*

**4.22** It is important for the Committee to be clear that the roles of the then Executive Leadership Team, as the most senior officer roles in the Council; were not focused solely on functional service delivery nor on lead professional responsibilities. Each Executive Director bore an obligation to the authority, its body corporate, over and above their specific designation and their roles, in advice giving and service delivery. Elected members and the people of Croydon are entitled to expect that the individuals appointed to these most senior of roles bear personal responsibility to provide effective management for the whole organisation and are accountable as such.

**4.23** Executive Directors were more than subject experts or functional managers. They had personal managerial responsibilities to contribute to the proper strategic co-ordination of the Council's functions and activities ensuring its effective and efficient governance and management. The statutory duty of achieving 'best value' in the overall performance of Council functions, provides the legal foundation for this expectation. An individual who was appointed as an Executive Director for Croydon Council had specific personal responsibilities outlined in the Council's Constitution in addition to duties specified in their job description.

#### **4.24 The Financial Regulations** – these apply equally to elected members and officers.

Section 1, paragraph 1.1 of the introduction to the Financial Regulations state: *"The regulations provide the governance framework for managing the Council's financial affairs. They apply to all Members, officers of the Council and anyone acting on its behalf."*

**4.25** Paragraph 1.4 of the introduction also says. *"All Members and officers have a general responsibility for taking reasonable action to provide for the security of the assets under their control and for ensuring that the use of these resources is legal, is properly authorised and achieves value for money. In doing so, proper consideration must be given at all times to matters of probity and propriety in managing the assets, income and expenditure of the Council"*.

**4.26** Paragraph 1.10 of the same section says, *“The regulations are supported by a set of mandatory Financial Policies and Procedures which provide more detailed direction on the arrangements to be complied with. All Officers and Members must ensure that they read and follow these procedures. Failure to comply may constitute misconduct and lead to formal disciplinary action”*.

**4.27** Section 8 paragraph 8.3 makes clear that, *“Executive Directors are responsible for establishing sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency and effectiveness and for achieving financial performance targets.”*

**4.28** And in the same section at paragraph 8.12 it is stated that if there are any suspicions that financial irregularity or avoidable losses may be taking place, there is a duty on all officers to act.

#### **4.29 The Members code of conduct**

Upon being elected, each elected member signs a declaration of office and commits to being bound by the members code of conduct contained in the council’s constitution. The code is designed to protect all councillors, the public, local authority officers and the reputation of this council. It sets out general principles of conduct expected of all councillors and their specific obligations in relation to standards of conduct. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

**4.30** Section 5 of the Code focuses upon disrepute. The code requires each member to agree not to bring the council into disrepute by their actions.

**4.31** The Code also requires member to ensure that public resources are used prudently in accordance with the council’s requirements and in the public interest.

#### **4.32 The Protocol on Staff-councillor Relations**

Two of the published independent reports describe the working relationship between senior officers and members as having generated an organisational culture which was dysfunctional, and which contributed to the Council’s financial and governance crisis.

**4.33** MHCLG’s Rapid Review report describes an unhealthy, dysfunctional working environment with *“many accounts of officers being asked to re-word Cabinet reports to present the most favourable picture”*.

**4.34** The October 2021 RIPI describes that environment as, *“collective corporate blindness to both the seriousness of the financial position and the urgency with which actions needed to be taken”*.

**4.35** There is a duty on both officers and Members to uphold the Protocol on Staff - Councillor Relations and it is described as *“important to the successful working of the authority”*. The Protocol is clear that it requires action to maintain it.

**4.36** The Kroll report’s executive summary chapter [pages 14-65] comments upon conduct and also outlines the expectations of the council’s constitution and contractual governance framework. There is a dedicated report on this committee agenda on the Kroll report.

#### **4.37 The recommendations from the Penn Report**

**4.38** The Penn Report contained 6 recommendations (**Appendix C**). Three of those recommendations have already been dealt with by this committee.

**4.39** At the April 2022 Appointments Committee, the remaining recommendations were stayed until the receipt of the Kroll report. That report has now been received and is before the committee today for its consideration. Two of the remaining recommendations are the focus of this report.

**4.40** The remaining recommendations are:

- Members are requested to consider referring this initial investigatory report to the Metropolitan Police for assessment of any further action being warranted in regard to the handling of public money and conduct in public office.
- It is recommended that members consider whether the concerns raised in this initial investigation report warrant a referral to the Conduct and Ethics Committee of the Chartered Institute of Public Finance and Accountability.

#### **4.41 Referral of the Penn and other reports to the police for their consideration.**

**4.42** The reports that have been published and the Kroll report which is on the committee's agenda today comment upon the conduct of individuals between 2014 and 2020.

**4.43** Referring the Penn report, the two Reports in the Public Interest, the Non-Statutory Rapid Review, the PwC report into the Council's Companies and other liabilities, and the Kroll report to the Metropolitan Police, as well as all other relevant documents, will enable them to consider whether any investigation is warranted.

**4.44** If there are concerns about the conduct of public office holders, it is possible that they may be addressed by reviewing the offence of misconduct in public office. Excerpts from the Crown Prosecution Service guidance note on this are reproduced below to aid the committee in its understanding. Their guidance note is appended in full at **Appendix 9** to the agenda pack for this meeting.

**4.45** Misconduct in Public Office is an offence confined to those who are public office holders and is committed when the office holder acts or fails to act in a way that constitutes a breach of that office.

**4.46** The offence is committed when:

- a public officer acting as such;
- wilfully neglects to perform his duty and/or wilfully misconducts himself;
- to such a degree as to amount to an abuse of the public's trust in the office holder;
- without reasonable excuse or justification

**4.47** The willful neglect or misconduct can be the result of a positive act or a failure to act. There must also be an element of knowledge or at least recklessness about the way in which the duty is carried out or neglected. In *Attorney General's Reference No 3 of 2003* the court

approved the definition of 'wilful' as 'deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not'.

- 4.48** Public officers carry out their duties for the benefit of the public as a whole. If they neglect or misconduct themselves in the course of those duties this may lead to a breach or abuse of the public's trust. The behaviour must be serious enough to amount to an abuse of the public's trust in the office holder. In *R v Dytham*, Lord Widgery said that the element of culpability: "... must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment."
- 4.49** Although the offence is not a 'results crime', the likely consequences of any wilful neglect or misconduct are relevant when deciding whether the conduct falls below the standard expected: "It will normally be necessary to consider the likely consequences of the breach in deciding whether the conduct falls so far below the standard of conduct to be expected of the officer as to constitute the offence. The conduct cannot be considered in a vacuum: the consequences likely to follow from it, viewed subjectively ... will often influence the decision as to whether the conduct amounted to an abuse of the public's trust in the officer. (Attorney General's Reference No 3 of 2003)."
- 4.50** Whilst there is no need to prove any particular consequences flowing from the misconduct, it must be proved that the defendant was reckless not just as to the legality of behaviour, but also as to its likely consequences.
- 4.51** In order to establish whether the behaviour is sufficiently serious to amount to the offence, the motive is also relevant. At its highest the motive may be malice or bad faith, but they are not prerequisites. Reckless indifference would be sufficient.
- 4.52** Other concerns in regard to conduct have been raised in relation to possible common law offences such as misfeasance in public office, a breach of the Financial Reporting Standards in regard to possible fraudulent accounting and budgeting, possible breaches of Section 1 of the 1999 Local Government Act, Section 151 of the Local Government Act 1972, Section 4 of the Local Government and Housing Act 1989, and Sections 5 and 5A of the Local Government and Housing Act 1989.
- 4.53** Although not intended to be an exhaustive list, for the Committee's consideration, some of the legal causes of actions or legal standards mentioned above against which the conduct, behaviours and activities reported could be assessed are set out in **Appendix D**.
- 4.54 Referral of the Penn and other reports to relevant professional bodies and institutes for their consideration.**
- 4.55** Professional bodies and institutes are bodies that, among other things, regulate the conduct, behaviours and activities of their members in the public interest. Entry to the professional body or institute is usually based on qualifications gained, experience at work, and length of service. Membership of the professional body or institute is maintained through a combination of continuing professional development and upholding the standards and conduct required by that body or institute. Local Government requires a wide range of professionally qualified officials to deliver its services. Many of the more senior posts in local government, e.g., solicitors, planners, development professionals, etc., will be required to have professional membership of regulatory bodies or (chartered) institutes as part of the council having assurance as to the professional knowledge and competency of that individual.

**4.56** There is one post which by law (section 113 of the Local Government Finance Act 1988) requires qualification and membership of a specified accountancy body such as the Chartered Institute of Public Finance and Accountancy (CIPFA). This is a pre-requisite in order to be employed as a chief finance officer (section 151).

**4.57** Professional bodies and institutes have frameworks to govern themselves and byelaws or rules that members agree to be bound by. They operate conduct and ethics committees (or equivalent decision making entities) and disciplinary processes to uphold the standards of the profession and the practice of their membership. As an example, CIPFA will investigate complaints against its members where there is evidence of:

- Professional incompetence;
- Breach of any guides to conduct, principles or rules (whether or not professional) prescribed and published by CIPFA Council;
- A Member having conducted himself/herself in such a way as to prejudicially affect the status, reputation or welfare of the Institute;
- A Member being guilty of 'misconduct' which for these purposes includes any conduct which has brought or is likely to bring discredit upon him or herself, his or her employer,
  - the Institute or the profession of accountancy;
  - member being convicted in any proceedings in relation to which a sentence of imprisonment may be imposed;
  - a member being subject to a finding or other determination in any civil or criminal proceedings that he or she has acted dishonestly or fraudulently.

**4.58** Referring 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, and the Kroll report as well as other relevant documents to the relevant professional bodies and institutes will enable them to consider whether any investigation into the conduct of any members is warranted.

## **5 ALTERNATIVE OPTIONS CONSIDERED**

**5.1** An alternative option is to cease action on the two stayed recommendations and to dismiss the recommendations.

**5.2** Due to the public interest matters relating to the financial and governance crisis at Croydon Council and the intense interest in accountability for the situation, this is not recommended to members at this time, but does remain an option for them to consider.

## **6 CONSULTATION**

**6.1** N/A

## **7. IMPLICATIONS**

## **7.1 FINANCIAL IMPLICATIONS**

- 7.1.1** The Penn report revealed a broad range of historic legacy problems that help identify the causes which eventually led to the Council issuing three S114 notices and the Council's external auditors issuing two Reports in Public Interest.
- 7.1.2** The Council's financial mismanagement will mean the Council and residents of the Borough will have to pay for such costs for many years to come.
- 7.1.3** The cost of funding this work, including any subsequent, legal and financial advice, is funded from existing budgets previously set aside and will not result in overspends.
- 7.1.4** The potential outcomes of any referrals are unlikely to result in financial benefits back to the Council but any such findings will help the Council in making governance and operational improvements.
- 7.1.5** Comments approved by Jane West Corporate Director of Resources and Chief Finance Officer 150323

## **7.2 LEGAL IMPLICATIONS**

- 7.2.1** The Council has a broad discretion to make referrals to the Police and/or professional bodies and institutes as recommended by the Penn report and on its own initiative. But this discretion must not be abused or fettered and exercised reasonably and in accordance with administrative law principles. The Committees decision must be rational, prudent and should consider all relevant considerations. No irrelevant considerations may be taken into account, and any decision made must be one which only a reasonable authority, properly directing itself, could have reached. The Committee is advised to have regard to all the prevailing facts and circumstances and, in particular, the information presented in this report and other related information forming part of this Committee meeting's agenda pack.
- 7.2.2** Comments approved by Looqman Desai, Deputy Monitoring Officer, on behalf of the Director of Legal Services and Monitoring Officer. (150323)

## **7.3 EQUALITIES IMPLICATIONS**

- 7.3.1** 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.

**7.3.2** “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.

**7.3.3** There are no immediate equalities implications arising from this report however, as the main body of the report outlines, it is in the council’s interests and in the public interest to ensure that those responsible for the council’s financial situation and governance failures are fairly and properly held to account so that public trust and confidence can be restored. In holding those people to account the council should ensure there is no bias, unequal or less favourable treatment on the grounds of one or more protected characteristics.

**7.3.4** Comments approved by Dean Shoesmith, Chief People Officer. Date 15/03/2023.

## **8. APPENDICES SPECIFIC TO THIS REPORT**

**9.1** *Exempt Appendix A:* List of individuals to be referred to relevant professional bodies and institutes for their consideration;

Appendix B: Seven Principles of Public Life

Appendix C: Penn report Recommendations

Appendix D: Legal causes of action and legal standards for assessing conduct, behaviours and activities under consideration.

## **9. BACKGROUND DOCUMENTS**

None

## **Appendix B – The Seven Principles of Public Life**

The principles are:

**Selflessness** Holders of public office should act solely in terms of the public interest.

**Integrity** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

**Objectivity** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

**Accountability** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

**Openness** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**Honesty** Holders of public office should be truthful.

**Leadership** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## Appendix C - Penn report recommendations

1. It is therefore recommended that, when this report is presented to the relevant Council body, formal consideration is given to whether the concerns raised in this report warrant further formal proceedings to be commenced in line with the JNC disciplinary procedures. The officers involved will have the opportunity to make representations to members of that Committee as part of its formal consideration whether or not to proceed with any further formal action. The three officers involved are:
  - the (current) Executive Director of Resources and Monitoring Officer,
  - the (current) Executive Director for Place, and
  - the (current) Director of Finance, Investment and Risk and S151 Officer.
2. Concerns have also been raised about the behaviour of the Executive Leadership Team as a group and its behaviour in response to possible breaches of the Officer Code of Conduct in regard to bullying behaviour. Members are asked to consider what, if any, further action is warranted in regard to these concerns.
3. It is also recommended that when this report is presented to the relevant Council body, formal consideration is given as to whether there have been breaches of the Member Code of Conduct and the Protocol on Staff - Councillor Relations and whether formal action is appropriate in regard to any potential breaches. The members involved are:
  - the Former Leader of the Council, and
  - the former Cabinet Member for Finance & Resources.
4. The investigation has raised concerns about the actions and inactions of the former Executive Director of Resources and S151 Officer. This individual is no longer employed by the Council. It is recommended that members consider whether the concerns raised in this initial investigation report warrant a referral to the Conduct and Ethics Committee of the Chartered Institute of Public Finance and Accountability.
5. The investigation has raised concerns about the actions and inactions of the former Chief Executive who is no longer employed by the Council. It is recommended that members consider a review of the settlement agreement that was signed by the Council with the former Chief Executive and whether the concerns raised in this initial investigation constitute a repudiatory breach of her contract and thus a breach of the terms of the settlement.
6. Members are also requested to consider referring this initial investigatory report to the Metropolitan Police for assessment of any further action being warranted in regard to the handling of public money and conduct in public office.

## 1. Appendix D: Legal causes of action and legal standards for assessing conduct, behaviours and activities under consideration

### Misfeasance in public office

What is misfeasance in public office?

Misfeasance in public office is an action against a holder of public office. It provides a remedy for persons who are injured by the actions of a public officer who has exercised his powers in bad faith. It is an unusual tort in that the prime focus is on the motivation of the defendant.

There are similarities between the tort of misfeasance in public office and the criminal offence of misconduct in public office. However, the two are not the same and care should be taken before transferring principles between them.

The ingredients of the tort are as follows.

- The defendant must be a public officer.
- The defendant must have exercised power as a public officer.
- The defendant must have acted with malice or in bad faith, either with the intention of injuring the claimant or, being aware of the risk of such injury, without an honest belief that his conduct was lawful.
- That conduct must have caused the claimant material injury or damage of a sort foreseen by the defendant.

Each of these ingredients is considered below. However, this is a tort which is still developing and so the law remains unclear in a significant number of areas.

#### 1. The defendant must be a public officer

The defendant must have “governmental” power, meaning the power to interfere with the way in which other citizens wish to conduct their affairs.

#### 2. The defendant must have exercised power as a public officer

A claim for misfeasance in public office may be founded on an omission as well as an act. However, the omission must be deliberate and conscious in order to give rise to liability.

It has been held that even a deliberate failure to act will not sustain liability, unless there was (at least in effect) a duty to do the act in question.

#### 3. The defendant must have acted with malice or bad faith

There are two ways in which the necessary mental element of the tort may come about.

“Targeted malice” arises where the defendant specifically and improperly intends to

cause injury or damage to a person or persons. To bring a claim under this head, it is not necessary for the claimant to show that the conduct in question would otherwise be unlawful; the improper motive makes it so. "Untargeted malice" arises where the defendant knows (or is subjectively reckless as to the risk) that:

- He has no power to do the act complained of; and
- The act will probably injure a person or persons.

Untargeted malice is more complex than targeted malice as set out below.

### **Unlawful conduct**

The authorities suggest that conduct in question must already be unlawful in order to make out a claim for misfeasance under this head. It is likely that a claimant relying on this limb will have to show that the defendant did not have the power to act as he did, leaving aside his (the defendant's) knowledge, intention or recklessness.

### **Knowledge of unlawfulness**

Mere unlawfulness cannot found a claim in misfeasance; an element of "knowledge" is required. Actual knowledge of unlawfulness is sufficient but not necessary. However, while the defendant need not actually know that his conduct is unlawful in order to be liable, it is not enough that he ought reasonably to have known that his act was unlawful. His action must at least be subjectively reckless; he must have been aware that his conduct might be unlawful but recklessly ignored the risk. This involves bad faith in that the public officer does not have an honest belief that his act is lawful.

### **Knowledge of probability of damage**

It is also necessary to show that the defendant had some "knowledge" of the probability of damage. The defendant need not actually know that his conduct would cause damage, but it is not sufficient to show that damage was reasonably foreseeable. The defendant must actually have foreseen that his conduct would "probably" cause damage of the sort which has been suffered by the claimant.

The defendant must have caused the claimant material damage. The tort of misfeasance in public office is not actionable per se without proof of actual damage or loss, even if the abuse of power is grievous. In general, the normal principles of tort claims apply to claims for misfeasance in public office.

## **2. Misconduct in Public Office**

Misconduct in public office is an offence at common law triable only on indictment. It carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office.

Definition of the Offence

The elements of the offence are summarised in Attorney General's Reference No 3 of 2003 [2004] EWCA Crim 868.

The offence is committed when:

- a public officer acting as such;
- wilfully neglects to perform his duty and/or wilfully misconducts himself;
- to such a degree as to amount to an abuse of the public's trust in the office holder;
- without reasonable excuse or justification.

#### A Public Officer

The prosecution must have evidence to show that the suspect is a 'public officer'. There is no simple definition and each case must be assessed individually, taking into account the nature of the role, the duties carried out and the level of public trust involved.

The following have been accepted as holding a public office by the courts over several centuries:

- Local authority employees (1995) Bowden 4 All E.R 505
- Local councillor (2004) R v Speechley [2004] EWCA Crim 3067

#### **Wilful neglect or misconduct**

- Nature of the neglect or misconduct

The wilful neglect or misconduct can be the result of a positive act or a failure to act.

There must also be an element of knowledge or at least recklessness about the way in which the duty is carried out or neglected. The test is a subjective one and the public officer must be aware that his/her behaviour is capable of being misconduct.

- Meaning of 'wilful' (also see 'Breach of Duty')

In Attorney General's Reference No 3 of 2003 the court approved the definition of 'wilful' as 'deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not'.

#### **Abuse of the public's trust**

Public officers carry out their duties for the benefit of the public as a whole. If they neglect or misconduct themselves in the course of those duties this may lead to a breach or abuse of the public's trust.

- Seriousness of the neglect or misconduct

The behaviour must be serious enough to amount to an abuse of the public's trust in the office holder. In Attorney General's Reference No 3 of 2003 the court said that the misconduct must amount to:

“... an affront to the standing of the public office held. The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder.”

- **Consequences**

Although the offence is not a 'results crime', the likely consequences of any wilful neglect or misconduct are relevant when deciding whether the conduct falls below the standard expected:

“It will normally be necessary to consider the likely consequences of the breach in deciding whether the conduct falls so far below the standard of conduct to be expected of the officer as to constitute the offence. The conduct cannot be considered in a vacuum: the consequences likely to follow from it, viewed subjectively ... will often influence the decision as to whether the conduct amounted to an abuse of the public's trust in the officer. (Attorney General's Reference No 3 of 2003).”

Whilst there is no need to prove any particular consequences flowing from the misconduct, it must be proved that the defendant was reckless not just as to the legality of his behaviour, but also as to its likely consequences.

The consequences must be likely ones, as viewed subjectively by the defendant. Although the authorities do not say so, likely can probably be taken to mean at the very least 'reasonably foreseeable'; it is arguable that likely may mean 'probable' in this context.

- **Motive**

In order to establish whether the behaviour is sufficiently serious to amount to the offence, the officer's motive is also relevant.

At its highest the motive may be malice or bad faith but they are not prerequisites. Reckless indifference would be sufficient.

### **Without reasonable excuse or justification**

It is not necessary for the prosecution to prove the absence of a reasonable excuse or justification, although the nature of the prosecution evidence should in practice negate any such element.;

The defendant may advance evidence of a reasonable excuse or justification. It is for the jury to determine whether the evidence reveals the necessary culpability.

### **3. Fraud**

In the UK the legal test to apply is the Fraud Act 2006.

"Fraud by false representation" is defined by Section 2 of the Act as a case where a person makes "any representation as to fact or law ... express or implied" which they know to be untrue or misleading.

"Fraud by failing to disclose information" is defined by Section 3 of the Act as a case where a person fails to disclose any information to a third party when they are under a legal duty to disclose such information.

"Fraud by abuse of position" is defined by Section 4 of the Act as a case where a person occupies a position where they are expected to safeguard the financial interests of another person, and abuses that position; this includes cases where the abuse consisted of an omission rather than an overt act.

In all three classes of fraud, it requires that for an offence to have occurred, the person must have acted dishonestly, and that they had to have acted with the intent of making a gain for themselves or anyone else, or inflicting a loss (or a risk of loss) on another.

### ***Gain and loss***

Importantly a "gain" or a "loss" is defined to consist only of a gain or a loss in money or property (including intangible property).

This needs to be judged against the criminal intent test 'of making a gain for themselves or anyone else, or inflicting a loss' applied against the Fraud Act 2006 which is the test that the Crown Prosecution Service may apply for any of those named in the report.

The Crown Prosecution Service have some useful worked examples of cases and guidance for prosecutors in relation to abuse of position which help to illustrate the scope and intent of the Fraud Act. For example, the 'causing a loss' example under 'abuse of position' where an employee who fails to take up the chance of a crucial contract in order that an associate or rival company can take it up instead would allow the Crown Prosecution Service to pursue that individual in law i.e. the person acting with criminal intent rather than having to 'go after' the associate or rival company.

By virtue of paragraph(s) 1, 2, 5, 7 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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## London Borough of Croydon

Report in the Public Interest concerning the Council's financial position and related governance arrangements

# London Borough of Croydon

## Report in the Public Interest concerning the Council's financial position and related governance arrangements

### Summary

We are issuing this report as a Report in the Public Interest under section 24 and Schedule 7 of the Local Audit and Accountability Act 2014. The Council is required to publish this report as soon as practicable, consider it at a meeting held in public within one month of the date of publication and provide a publicly available written response to us.

The London Borough of Croydon (the Council) has experienced deteriorating financial resilience for a number of years with spending pressures within both children's and adult social care and low levels of reserves which created a significant financial challenge in 2020/21. The size of the financial gap in 2020/21 has increased due to the additional financial pressures as a result of the covid-19 pandemic. The Council has reached the view that external support from the Ministry of Housing, Communities and Local Government (MHCLG) is required and a formal request has been made to allow the Council to treat some of the day to day expenditure as capital.

As the Council's external auditor, we identified concerns relating to the financial sustainability criteria of the value for money conclusion in 2017/18 and raised recommendations for improvements. The financial position deteriorated during 2018/19 and we issued an adverse qualification of our value for money conclusion. Our recommendations in 2017/18 and 2018/19 were not implemented and the financial position continued to deteriorate during 2019/20. The spending pressures identified in 2017/18 continued into 2020/21 and we wrote to the former Chief Executive in April 2020 setting out action we considered to be vital. At the end of August 2020, the Council had failed to produce a formal action plan or to respond to our audit recommendations effectively. A formal written response was received on 28 September 2020.

The Council has had an unsustainably low level of reserves for some time. The Council has had the lowest level of all London Boroughs of General Fund and Earmarked General Fund Reserves as a percentage of net service revenue expenditure and the reported level of reserves has continued to decrease in each of the previous three years. We reported the risk with low level of reserves to the Council and external parties such as the CIPFA Financial Resilience Index and the Institute for Fiscal Studies highlighted the risk. The Council has failed to adequately address the low level of reserves.

In the past three years, the Council has reported significant service overspends of £39.2 million within children's and adult social care. The Council used the flexibility granted by Government to apply capital receipts to transformation schemes in both children's and adult social care. Despite applying significant amounts of transformation monies (£73 million) in the past three years the Council continues to experience overspends in both departments and planned significant growth funding in the original 2020/21 budget. There is little evidence that the transformation monies have been used to achieve the Government's intended aims of this capital receipts flexibility, namely, reducing demand, delivering savings or reducing costs. The impact of the overspends has been masked by both the accounting treatment of the Dedicated Schools Grant deficit (which we disagree with) and the use of the flexible capital receipts. The Council has failed to deliver real savings in children's and adults' social care.

The budget monitoring reports during 2019/20 showed significant overspends, which reduced following 'corporate adjustments' of £17.7 million. The reports were accepted by Members without an appropriate level of challenge to continued service overspends, continued Unaccompanied Asylum Seeker Children (UASC) overspends or the validity of adjustments made to improve the outturn position. The Council set the 2020/21 budget in March 2020 prior to the covid-19 pandemic being declared. There was insufficient challenge from Members on the financial risks in the budget, credibility of the planned level of income from third parties and deliverability of the savings plan. The Council's governance over the budget setting and monitoring has not been good enough.

In response to both the growing financial gap and our letter, the Council established a Finance Review Panel in May 2020 and retained a Financial Consultant. The Financial Consultant has reviewed budget setting, monitoring and reporting processes and identified areas for improvement. Initial progress was swift and a budget gap for 2020/21 of £65 million was identified together with £21 million of in-year savings to narrow the gap if the savings were achieved. The position was reported to Cabinet in July 2020 and subject to Scrutiny and Overview Committee call-in in August 2020. Neither meeting referred the significant fact that the budget gap exceeded the available reserves, to Full Council. In our view this was a failure of governance and showed a lack of understanding of the urgency of the financial position. In September 2020, following the departure of the former Chief Executive and progress stalling on identifying deliverable savings, the Section 151 Officer drafted, but did not formally issue, a section 114 report which was discussed with the then Leader, the Deputy Leader, the then Interim Chief Executive and Monitoring Officer who agreed to amendments to the 2020/21 General Fund Budget via Cabinet and Full Council in September 2020.

The Council has increased the level of borrowing significantly in recent years (£545 million in three years) and used the borrowing to invest in companies it established and to purchase investment properties. The strategy for investing in properties was approved at Full Council using guillotine procedures meaning there was insufficient time to discuss and challenge the strategy and the first purchase was made two months prior to approving the strategy. The Council's approach to borrowing and investments has exposed the Council and future generations of taxpayers to significant financial risk. There has not been appropriate governance over the significant capital spending and the strategy to finance that spending.

The Council established a number of companies including wholly owned and part owned companies. The Council's governance and oversight of the companies shows insufficient rigor and control. Despite heavy investment from the Council, the Council has not yet received any significant return.

There has been collective corporate blindness to both the seriousness of the financial position and the urgency with which actions needed to be taken. The Council commissioned a review of its governance arrangements in March 2020 which concluded that improvements were needed to the culture around decision making. We agree with this recommendation and we note that we have not seen an improvement in the culture of decision making as it relates to financial sustainability. 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 addressing 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. Councils are statutory entities which must follow the law. The law is very clear on the legal requirement for councils to set a balanced budget. The Council's fragile financial position and weak underlying arrangements have been ruthlessly exposed by the impact of the Covid-19 pandemic.

Had the Council implemented strong financial governance, responded promptly to our previous recommendations and built up reserves and addressed the overspends in children's and adult social care, it would have been in a stronger position to withstand the financial pressures as a result of the Covid-19 pandemic. The Council needs to urgently address the underlying pressures on service spends and build a more resilient financial position whilst also addressing the long-term financial implications of the capital spending and financing strategy together with the oversight of the Council's group companies.

## Recommendations

This report makes a number of recommendations for the Council to address, with the high priority recommendations in bold.

- R1. *The Executive Directors need to address the underlying causes of social care overspends:***
- R1a *in children's social care and take effective action to manage both the demand and the resulting cost pressures***
- R1b *in adults social care and take effective action to manage both the demand and the resulting cost pressures***
- R2. *The Council (including Cabinet and Scrutiny and Overview Committee) should challenge the adequacy of the reserves assessment which should include a risk assessment before approving the budget.***
- R3. *The Chief Executive should oversee a review of the outcomes achieved from the use of transformation funding to demonstrate that the funding has been applied in accordance with the aim of the scheme.***
- R4. *The s151 officer should set out the strategy for applying capital receipts for transformation annually as part of the budget setting process.*

- R5. *The General Purposes and Audit Committee should receive reports on the actions being taken to address the DSG deficit and challenge whether sufficient progress is being made.*
- R6. *The Executive Director (Children's) needs to review the services provided to UASC and to identify options to meet their needs within the grant funding provided by the Home Office.*
- R7. *The Executive Director (Children's) needs to identify the capacity threshold for the numbers of UASC that it has the capacity to deliver safe UASC services to.*
- R8. *The Cabinet reports on the financial position need to improve the transparency of reporting of any remedial action taken to address in year overspends.*
- R9. *The Council (including Cabinet and Scrutiny and Overview Committee) need to show greater rigor in challenging underlying assumptions before approving the budget including understanding the track record of savings delivery.***
- R10. *The General Purposes and Audit Committee must challenge officers on the progress in implementing the Financial Consultant's recommendations to improve the budget setting, monitoring and reporting process and actions to address the Head of Internal Audit's concerns on internal controls.*
- R11. *The s151 officer needs to revisit the Growth Zone assumptions following the pandemic and make recommendations to Cabinet and Council for the continued investment in the scheme.*
- R12. *The s151 officer should review the financial rationale and associated risks and make recommendations to Cabinet and Council on whether the Revolving Investment Fund should continue.***
- R13. *The s151 officer should review the purchase of Croydon Park Hotel to identify lessons learned to strengthen future due diligence arrangements.*
- R14. *The Cabinet and Council needs to re-consider the Treasury Management Strategy for ongoing affordability of the borrowing strategy, the associated risks and identify whether alternative options can reduce the financial burden.***
- R15. *The Chief Executive should arrange detailed Treasury Management training to assist Members to better understand and challenge the long-term financial implications of matters reported within the Treasury Management Strategy.*
- R16. *The s151 officer should revisit the Minimum Revenue Provision policy to demonstrate that a prudent approach is being taken.*
- R17. *The Cabinet and Council should reconsider the financial business case for continuing to invest in Brick by Brick before agreeing any further borrowing.*
- R18. *The Cabinet and Council should review and reconsider the ongoing financial rationale for the Council in the equity investment arrangement with Brick by Brick.***
- R19. *The s151 officer and monitoring officer should monitor compliance with loan covenants with Brick by Brick and report any breaches to Members.*
- R20. *The Cabinet and Council should review its arrangements to govern its interest in subsidiaries, how the subsidiaries are linked, the long-term impact of the subsidiaries on the Council's financial position and how the Council's and taxpayers interest is safeguarded.***

## Introduction

We are issuing this report as a Report in the Public Interest under section 24 and Schedule 7 of the Local Audit and Accountability Act 2014. The Council is required to publish this report as soon as practicable, consider it at a meeting held in public within one month of the date of publication and provide a publicly available written response to us.

## Background

The London Borough of Croydon (the Council) has experienced deteriorating financial resilience for a number of years with service overspends being met through one-off actions including the release of reserves. Ofsted assessed children's services in Croydon as inadequate in September 2017 and the Council responded with additional investment in this service area impacting further on the in-year service overspend. The low level of reserves and unresolved spending pressures meant that the Council has struggled to respond to the financial challenges created by the Covid-19 pandemic. As a result of the existing financial position and the financial pressures from the pandemic, the Council has issued an amended budget in September 2020 in an attempt to avoid a section 114 report being served, and has formally engaged with MHCLG as per the CIPFA guidance

Prior to recent events we as the Council's external auditor have expressed concerns and raised recommendations in relation to the Council's financial sustainability and it is necessary to understand the sequence of events. The key points are set out below:

### 2017/18 value for money conclusion reporting and recommendations

We presented our 2017/18 Audit Findings Report to the General Purposes and Audit Committee in July 2018. Within our Value for Money Conclusion Report we identified concerns relating to the financial sustainability criteria and made recommendations to address the continued overspends within social care, the use of flexible capital receipts to fund transformation expenditure and the low level of reserves.

Our overall conclusion was:

*Your reserves are now at a very low position and you face a number of clear risks to your continued financial health.*

*You have plans in place to take appropriate action to manage cost pressures, increase income sources and address the level of your reserves. The progress and impact of your actions are vital to enable you to deliver a balanced budget over the medium term.*

*On the basis that you delivered a balanced budget in 2017/18 and can reasonably expect to do so in 2018/19, we concluded that the risk that we identified in respect of your budget position has been sufficiently mitigated and that you have proper arrangements.*

### 2018/19 value for money conclusion reporting and recommendations

We presented our 2018/19 Value for Money Conclusion to the General Purposes and Audit Committee in October 2019. We identified significant cost pressures from demand led services and specific cost pressures from Unaccompanied Asylum Seeker Children (UASC) together with the reported reserve position remaining low compared to other London Boroughs. We also reported that the overspend on the Dedicated Schools Grant (which had been excluded) should be considered within the reported reserves position as the forecast deficits in both 2019/20 and 2020/21 exceed the available general fund reserves in future years.

Our overall conclusion was:

*On the basis of the significance of the matters we identified with your levels of reserves and the matters relating to Children's Services raised by OFSTED, we are not satisfied that the Council has made proper arrangements to secure economy, efficiency and effectiveness in your use of resources. We therefore propose to give a qualified 'adverse' conclusion.*

Adverse qualifications of the Value for Money Conclusion are not common within the Local Government sector with only 4 being issued to top tier authorities in 2017/18 (the latest data available).

Our 2018/19 report noted that the recommendations from 2017/18 had not been implemented and we raised two further recommendations on the need to manage the Dedicated Schools Grant within existing budgets and to manage the impact of Unaccompanied Asylum Seeker Children (UASC) costs and look to seek a long-term solution.

#### 2019/20 in-year financial position and 2020/21 budget setting

We continued to review the 2019/20 in-year financial position. The Quarter 2 outturn position (reported in November 2019) forecast an outturn deficit of £10.4 million which accounted for the majority of the existing General Fund reserve at 31 March 2019. We met with the s151 Officer (Director of Finance, Investment and Risk) and the Cabinet Member for Finance and Resources in December 2019 to discuss whether the Council had exhausted its reserve position. We received verbal representations that action was being taken to address the in-year financial position. The Quarter 3 outturn position (reported in January 2020) forecast an outturn deficit of £2.4 million, which was an improvement in the planned position of £8 million in three months. We requested an analysis of the movement between the reported in-year financial position to better understand the Council's financial position.

Based on our concerns regarding the 2019/20 forecast outturn position, we reviewed the 2020/21 budget and identified assumptions that we considered to be optimistic. Our meeting to discuss our concerns in March 2020 was delayed due to officers needing to respond to the pandemic. In early April we raised our concerns in meetings first with the s151 Officer and subsequently with the former Chief Executive, Executive Director of Resources (Monitoring Officer) and s151 Officer. It was evident that the pandemic had changed a number of the original 2020/21 budget assumptions. Based on the discussions of a worsening financial position and a very low reserve position we wrote to the former Chief Executive on 22 April 2020 setting out a number of areas where we wanted a written response.

This report sets out in more detail the areas of auditor concern identified in our letter to the former Chief Executive on 22 April 2020 and subsequent events.

#### **Previous recommendations**

As the external auditor we report our findings from our audit work to Those Charged with Governance, the General Purposes and Audit Committee. We raised matters of concern together with recommended action in 2017/18 and 2018/19 with the following recommendations.

##### 1. Address social care overspends in the Children, Families and Education and the Health, Wellbeing and Adult departments

In 2017/18 we recommended that the Council take action to address social care overspends. The budget for both Children's and Adult Social Care included growth items each year however the overspends continued in 2018/19 and 2019/20 and the Quarter 1 report for 2020/21 shows continued pressures on these budgets.

Based on the published outturn reports the net overspends reported were

Area	2016/17 £ million	2017/18 £ million	2018/19 £ million	2019/20 £ million	2020/21 (Q1) £ million
Children's social care	6.4	11	9.5	8.4	16.5
Adult social care	2.2	0	1.7	8.6	30.2
Other departments	1.8	-4.2	-4.2	-13.5	15.1
Non-departmental	-10.45	-8.1	-6.7	-12	7.5
Exceptional	0	6.3	5.1	8.7	3.3
MHCLG funding re COVID					-23.5
Reported overspend	(0.05)	5.0	5.5	0.2	49.1

The challenges of demand led services with both Children's and Adult Social Care impacts across the Local Government sector and the Council is not unique in facing pressures on these budgets. The Council has included growth items in the budgets and applied transformation funding for each area and the overspends continue indicating that any action taken has not addressed either the continuing demand or the cost of meeting that demand. Although the demand pressures differ between Children's and Adult Social Care services, the Council has not demonstrated that it can take effective action to either manage the cost pressures or establish appropriate budgets within Children's and Adult Social Care services.

R1. *The Executive Directors need to address the underlying causes of social care overspends:*

R1a *in children's social care and take effective action to manage both the demand and the resulting cost pressures*

R1b *in adults social care and take effective action to manage both the demand and the resulting cost pressures*

## 2. Maintain reserves at a sustainable level

The Council has the lowest level of all London Boroughs of General Fund and Earmarked General Fund Reserves (excluding schools) as a percentage of net service revenue expenditure. The reported reserves levels have continued to decrease in recent years in part due to the overspends.

Year	General Fund £ million	Earmarked reserves £ million	Total General Fund and Earmarked Reserves £ million	Change from prior year %
2015/16	10.7	47.5	58.2	
2016/17	10.7	33.4	44.1	24% reduction
2017/18	10.4	18.2	28.6	35% reduction
2018/19	10.4	18.0	28.4	0.7% reduction
2018/19 restated*	10.4	8.8	19.2	32% reduction
2019/20 draft	7.5	9.1	16.6	13% reduction

\* In 2018/19 we reported in our Audit Findings Report that the Council had not accounted for its Dedicated Schools Grant deficit correctly. The DSG deficit was £9.2 million but was treated as a debtor which we disagreed with. If the appropriate amendment had been made in 2018/19 the reported reserves position would have dropped to £19.1 million as at 31 March 2019. In the unaudited 2019/20 financial statements the Council has now made this adjustment.

Section 25 of the Local Government Act 2003 requires the Chief Financial Officer (CFO) to report on the robustness of the budget estimates and the adequacy of the planned reserves when the council tax decision is being made by the Council. This forms part of the statutory advice the Section 151 officer to the Council provides together with the advice throughout the year.

The reports to Council setting the Council Tax budget did include a statement from the Section 151 officer setting out the adequacy of the planned reserves together with any concerns. The budget reports set out both the Financial Strategy target level of reserves and the Section 151 Officer's assessment of adequacy.

	2017/18	2018/19	2019/20	2020/21
Level of General Fund balances as % of net operating expenditure	3.8%	4%	3.9%	3.9%
Financial Strategy target	5%	3 – 5%	3 – 5%	3-5%

The report setting the 2018/19 budget reduced the recommended level of reserves to a range without a detailed risk assessment. The budget was approved without evidence of challenge on whether the revised level of reserves was appropriate or whether the history of delivering services within the budget or delivering savings as planned had impacted on setting the appropriate reserves range.

In our reports presented to the General Purposes and Audit Committee in 2017/18 and 2018/19 we highlighted that the Council has the lowest level of reserves of all London Boroughs and gave an adverse qualification based on low reserves in 2018/19. External parties such as the CIPFA Financial Resilience Index and the Institute for Fiscal Studies have highlighted the low level of reserves at the Council. The 2020/21 budget was approved at Cabinet and Full Council without reference to the external auditor's adverse qualification of the value for money conclusion due to the level of reserves. The Section 151 officer included a £5 million contribution to reserves in setting the 2020/21 budget despite some resistance from Members. The Council did not display sufficient understanding of their reserve position relative to the financial challenges faced.

*R2. The Council (including Cabinet and Scrutiny and Overview) should challenge the adequacy of the reserves assessment which should include a risk assessment before approving the budget.*

### 3. Reduce reliance on use of capital receipts for transformation expenditure

The Secretary of State for Communities and Local Government issued guidance in March 2016, giving local authorities greater freedoms with how capital receipts can be used to finance expenditure. The Direction allowed for expenditure to be treated as capital where conditions are met. The Council must consider the Statutory Guidance issued by the Secretary of State which requires authorities to prepare, publish and maintain a Flexible Use of Capital Receipts Strategy with the initial strategy being effective from 1st April 2016 with future Strategies included within future Annual Budget documents.

The guidance provided a definition of expenditure which qualifies to be funded from capital receipts. This is:

*Qualifying expenditure is expenditure on any project that is designed to generate ongoing revenue savings in the delivery of public services and/or transform service delivery to reduce costs and/or transform service delivery in a way that reduces costs or demand for services in future years for any of the public sector delivery partners. Within this definition, it is for individual local authorities to decide whether or not a project qualifies for the flexibility.*

Cabinet in July 2016 agreed the approach for flexibility in the use of capital receipts to support transformation where officers and members believe this to be appropriate. The strategy was presented to Cabinet in December 2017 which set the intended usage of flexible capital receipts during 2017/18.

After the strategy was presented to Cabinet in December 2017 there have been narrative references to confirm that the capital receipts would continue to be used where appropriate to fund transformation schemes in both the 2018/19 and 2019/20 budget papers presented to Cabinet and Full Council. A detailed strategy has not been presented since December 2017.

There is limited evidence of challenge over where transformation funding was being applied or whether outcomes had been achieved. For a scheme that has invested £73 million over three years it is inadequate that the schemes receiving transformation funding were not subject to reporting and challenge by Members including whether the intended outcomes had been achieved.

The intention of the transformation funding was to generate ongoing savings, reduce demand or reduce costs. After three years of transformation funding we would expect to see a reduction in the growth required in the associated budget. The three areas receiving the majority of transformation funding continue to receive additional growth funding in the 2020/21 budget. The substantial budget growth for both children's and adults' social care together with the significant transformation funding indicates that the transformation funding may have been used to meet service overspends rather than to transform the services which is not an appropriate use of transformation funding and does not comply with the Secretary of State's Direction.

Area	Transformation funding 2017/18 to 2019/20	Growth in 2020/21 budget
	£m	£m
Digital transformation	15	2
Children's social care	28.9	10.1
Adult social care	21.1	21.2

The Council has not shown sufficient understanding of how the transformation funding has been applied or the impact the transformation funding has had in generating ongoing savings, reducing demand or reducing costs. We will need to formally consider whether the application of capital receipts in this manner has formally breached the regulations set by Government.

*R3. The Chief Executive should oversee a review of the outcomes achieved from the flexible use of capital receipts for transformation to demonstrate that the funding has been applied in accordance with the Statutory Guidance.*

*R4. The s151 officer should set out the strategy for applying capital receipts for transformation annually as part of the budget setting process.*

#### 4. Manage Dedicated Schools Grant (DSG) within existing budgets

Across London and other parts of the country there are increasing demands and pressures on the Dedicated Schools Grant (DSG) and in particular on the High Needs Block which covers children and young people with Special Education Needs. The Council has seen an increase in demand and costs in recent years and has provided additional funding in excess of the government grant to meet local needs. The specific account which the Council needs to maintain of its use of DSG has therefore fallen into deficit.

In 2018/19, the Council chose to account for the deficit amount as a debtor at the end of the financial year which we disagreed with as the Council's approach was based on the view that the Government ought to refund the excess spending rather than any evidence that this would be the case. The accounting treatment of any overspend on DSG has been subject to review with CIPFA and the Department for Education. Our current view is that any overspends against the DSG should be carried forward as a call against the schools' budget in future years and should form part of the un-earmarked general fund reserve.

From 1 April 2020 the Regulations provide local authorities with flexibility in dealing with deficits from prior funding periods when determining the individual schools budget and enables local authorities to deduct all, some or none of the historic deficit in determining schools' budgets. The Council's estimated DSG deficit exceeds the available school balances and therefore impacts on the un-earmarked general fund.

	2017/18	2018/19	2019/20
DSG deficit in year	0.9	8.3	5.3
Cumulative position	0.9	9.2	14.5

The Council has submitted a recovery plan to the Department for Education over a five-year period. MHCLG has drafted regulations to enable a statutory override for DSG deficits for three financial years from 1 April 2020. If approved the Council will have three years to recover the DSG deficit. The actions to manage expenditure within the existing budget envelope and recover the deficit and progress on delivery of the recovery plan should be reported to Members for challenge as the current deficit reduces further the unearmarked general fund reserves or will do in 2023/24 if the draft regulation is passed.

*R5. The General Purposes and Audit Committee should receive reports on the actions being taken to address the DSG deficit and challenge whether sufficient progress is being made.*

#### 5. Manage the impact of Unaccompanied Asylum Seeker Children (UASC) expenditure and look to seek a long-term solution

The Home Office building located within Croydon results in the Council being a gateway authority for Unaccompanied Asylum Seeker Children (UASC). There is a national transfer scheme for UASC however this scheme does not appear to have worked as intended as the number of UASC children that remain the Council's responsibility has increased in the past three years.

The Home Office provides funding however the Council has not been able to contain expenditure on UASC within the funding provided and therefore additional overspends have been incurred.

	2017/18 £ million	2018/19 £ million	2019/20 £ million	2020/21 (Q1) £ million
Home Office funding received for UASC	15	19.2	16.9	
UASC costs in excess of Home Office funding – Croydon	2.9	10.6	8.7	3.3

The funding is received on the basis of an amount per child per night. The Council is not able to control the numbers of children it is responsible for. The Council, with other similarly impacted authorities, has lobbied for an increase in the rate per child. The latest rate was increased in June 2020 to £143 per child per night. The focus of the Council's effort has been on increasing the daily rate.

The daily cost of the services provided by the Council exceeds the daily rate received. There is a need for the Council to review how services can be delivered within the funding provided. The overspends from meeting UASC needs beyond the funding provided by the Home Office have contributed to the reduction in reserves.

As the number of UASC continues to increase the Council needs to consider where the capacity threshold is at which the service can no longer deliver safe care.

*R6. The Executive Director (Children's) needs to review the services provided to UASC expenditure and to identify options to meet their needs within the grant funding provided by the Home Office.*

*R7. The Executive Director (Children's) needs to identify the capacity threshold for the numbers of UASC that it has the capacity to deliver safe UASC services to.*

## 2019/20 outturn

The 2019/20 forecast position has been reported to the Cabinet throughout the year and this highlighted continued in-year overspends. The reduction in the forecast outturn overspend of £8 million between quarter 2 and quarter 3 is unusual and based on Cabinet minutes the explanation provided that this related to one-off initiatives was accepted without challenge. In an environment of financial pressures with low reserve levels, the Council did not display sufficient understanding of the urgency of the financial position during the financial year.

Area	Quarter 1 Forecast Variance £ million	Quarter 2 Forecast Variance £ million	Quarter 3 Forecast Variance £ million	Outturn Variance £ million
Children's, families and education	0.1	1.1	0.9	8.4
Health, Wellbeing and Adults	5	9.1	9.9	8.5
Place	0	0	-2.5	-4.8
Gateway, Strategy and Engagement	1.2	0.2	1	0.5
Resources	1	0	-4.5	-9.4
Corporate items	-7.3	-8.6	-10.6	-12.1
UASC	9.4	8.6	8.2	8.7
Total overspend	9.4	10.4	2.4	0.2

The key elements of the overspend (Children and adult social care plus UASC) total £25.6 million in 2019/20. All three areas were subject to previous auditor recommendations however insufficient action was taken to prevent the overspends continuing.

The change in the forecast overspend between quarter 2, 3 and the outturn report indicates either there were errors in the forecast or that action has been taken. The movement between reports was accepted at Cabinet without challenge. The outturn report presented to the Finance Review Panel highlighted £17.7 million of one-off corporate adjustments were made to be able to report the outturn as a £0.2 million overspend.

The one-off corporate adjustments are a matter of management judgement and as such carry a degree of risk. The presence of one-off corporate adjustments was not easily identifiable in the report to Cabinet making it more difficult for Members to challenge the validity of the one-off corporate adjustments.

We will be challenging the adjustments during the audit and the table below sets out the corporate adjustment with the initial auditor commentary.

Area	Amount Auditor Commentary £ million
Covid-19 grant	-0.6 One off nature
Reject carry forward requests	-0.8 Routine approach to budgetary management
Release of earmarked reserves	-2.9 Routine approach to managing an overspend with auditor expectation that this should have been clearly identified in the outturn report
MRP review	-0.2 Subject to auditor challenge regarding treatment of Brick by Brick borrowing in respect of MRP
Housing benefit bad debt provision released	-7.6 Subject to auditor challenge as auditor expectation is that the bad debt provision would increase in an economic downturn
Allocation of transformation funding	-5.6 Subject to auditor challenge on whether this meets the definition of transformation funding
<b>Total</b>	<b>17.7</b>

Our work on the auditor challenge of corporate adjustments will be completed following receipt of the draft financial statements on 16 October 2020 (these were due on 31 August 2020) and we will report our findings in the Audit Findings Report. Where the auditor challenge is not satisfied there is a risk that the reported overspend may increase with a resulting reduction in reserves.

*R8. The Cabinet reports on the financial position need to improve the transparency of any remedial action taken to address in year overspends*

## 2020/21 original budget setting

The original budget was presented to Cabinet in February 2020 and our review of the budget identified that the total amount of savings and additional income planned had doubled from the previous year to £65 million (£41 million savings with £24 million increased income). In assessing the credibility of any savings plan we consider the previous track record together with a more detailed review of the schemes.

The growth and savings identified each year are reported as part of the budget setting process. Thereafter the in-year financial reporting focuses on the outturn against budget. There is no reporting of the progress against individual savings schemes or the extent to which savings have been delivered overall. As a balanced budget is set, any overspend we have considered to be a notional shortfall in the savings plan. Based on our notional assessment of savings delivered the Council has an annual track record of achieving between £10 and £15 million of savings. A full year savings and additional income plan of £65 million was therefore not credible.

As part of approving the budget, we would expect challenge from Members on whether a significant savings plan was deliverable. The in-year financial reports do not identify progress against the savings plans agreed as part of the budget setting process and it is difficult to determine how Members reached the view that the savings plan within the budget being approved was achievable. We do not consider the Council's governance over the setting of the original 2020/21 budget to be good enough.

	2017/18 £ million	2018/19 £ million	2019/20 £ million	2020/21 £ million
Growth items	16.4	18.8	28.8	65.1
Savings and income items	-19.5	-17.5	-27.9	-65.1
Outturn for the year	5	5.5	0.1	
Notional savings delivered (savings less overspend)	14.5	12	10.1*	

\*after £17.7 million of adjustments

The savings plan in February 2020 included additional income sources that were in our view optimistic including £3 million dividend from Brick by Brick, a company the Council has already lent almost £200 million to and for which the Council has yet to receive any dividend or any interest owing on loans; additional income from property investments of £4 million and additional income from car parking and enforcement of £3.7 million. These items were included within the papers presented to Cabinet and Full Council as part of budget setting however there is limited evidence of challenge. We believe that once again, in financial matters, the Council was found wanting and has not protected council taxpayers funds to the standards expected of local authorities.

*R9. The Council (including Cabinet and Scrutiny and Overview Committee) needs to show greater rigor in challenging underlying assumptions before approving the budget including understanding the track record of savings delivery.*

## 2020/21 financial position to date

The Covid-19 pandemic changed the underlying assumptions of the 2020/21 budget with increased expenditure requirements, reduced ability to achieve income and a need to focus operational capacity on responding to the pandemic at the expense of delivering savings programmes. The pressures the Council face are not unique to Croydon however the scale of the pressure is exacerbated by both the optimism shown in the original budget setting and the low level of reserves.

Our initial concerns on the 2020/21 budget setting led us to consider issuing statutory recommendations which would require consideration at a public meeting. Following our discussions with the then Chief Executive, Monitoring Officer and S151 Officer in April 2020 we paused the statutory process as in our view issuing statutory recommendations in April 2020 during a peak of Covid-19 related deaths was not appropriate. There were actions we considered vital for the Council to take and we wrote to the former Chief Executive on 22 April 2020. Whilst a formal written response was not received from the former Chief Executive, a number of actions were taken and regular verbal updates on progress were provided to us. A formal written response was received from the Interim Chief Executive on 28 September 2020.

The actions taken included appointing a Financial Consultant and establishing a Finance Review Panel. The Financial Consultant was an experienced ex local government finance director and the Finance Review Panel (the Panel) membership included the Executive Leadership Team, two Cabinet members and three external professionals: a Director of Finance from another London Borough; a Chief Executive from another London Borough; and the Chief Executive of the local NHS Trust.

Initial progress was swift with the first meeting of the Panel on 21 May 2020 where the infrastructure to provide governance was established over the proposed actions to address the financial position. The size of the financial gap was identified as £65 million, which exceeds both the Council's level of reserves and the Council's track record of delivering in-year financial savings.

	£ million
Additional expenditure	26.3
Unachieved savings	31.7
Lost income	27.3
<b>Total gap in 2020/21</b>	<b>85.3</b>
Funding from government	19.9
<b>Remaining budget gap for 2020/21</b>	<b>65.4</b>

The Panel received reports on the broad areas for savings in May 2020 and by the June meetings had quantified savings of £21 million from actions during 2020/21 to narrow the gap. The most significant elements were:

- £2 million on staffing from a recruitment freeze, reduction of agency staff and review of layers and spans of control which was in the original 2020/21 budget to provide £1.7 million of savings
- £2.6 million from applying further transformation funding
- £2 million reduced revenue costs from reducing additional borrowing and avoiding further debt servicing costs
- £7.6 million from partnership working with the NHS of which £2.5 million is recurring. The original 2020/21 budget included £6 million of savings from this partnership
- £3 million from review of contracts

The July 2020 Cabinet paper 'Responding to the Local Government Challenge' set out the scale of the financial gap, high level actions being taken and statements from the former Head of Paid Service, Section 151 Officer and the Monitoring Officer. The Section 151 Officer highlighted that if the planned actions were not delivered then a section 114 report would be required. The written and verbal presentations to Cabinet did not refer to the concerns raised by the external auditor or to the Panel decision on 2 July 2020 to make an informal request to MHCLG to allow the Council to treat some of the day to day expenditure as capital.

During July and August 2020, the actions being taken within the Council did not increase the quantified savings being reported to the Panel: with some variation the expected savings remained between £21 and £23 million. The Scrutiny and Overview Committee on 25 August 2020 called in the Cabinet reports 'Responding to the Local Government Funding Challenge' and 'July Financial Review' and raised a number of pertinent questions. In response to member questions the Section 151 Officer confirmed that she could not guarantee that a section 114 report would be avoided. Members of the Scrutiny and Overview Committee accepted the responses received and did not refer the matter to Full Council. In our view this did not demonstrate an understanding of the urgency of the financial position.

The Panel on the 27 August 2020 highlighted that progress had stalled in July and August 2020. Renewed focus was observed during the meeting including a change in focus for the risk ratings for savings plans from being based on whether programme management documents were in place to being based on confidence in the delivery of the saving. There was also clarity that senior officers were focused on solutions with 'business as usual' activities being delegated within appropriate teams.

Following the former Chief Executive's departure in late August and the latest update to the Panel showing only £11 million of the identified £20 million savings were assessed as deliverable, the Section 151 Officer drafted her section 114 report. The draft section 114 report was discussed with the then Leader, the Deputy Leader, the then Interim Chief Executive, the Monitoring Officer and external auditor on 1 September 2020. In response the Cabinet arranged an amended budget meeting on 21 September 2020 with the intention of taking amended budget proposals to Full Council in October 2020. Cabinet identified a number of actions to close the gap in year and the Section 151 Officer agreed to reconsider her draft section 114 report dependent on the outcome of the 21 September Cabinet meeting on the emergency budget.

The pace of the actions in September and October 2020 was significantly more focused than during July and August and early indications suggest that the underlying cause of the continued overspend in both children's and adults social care is now being addressed. In our view the Council missed opportunities to take substantive action earlier to address the in-year budget gap indicating a lack of understanding of the urgency of the financial situation.

The Head of Internal Audit indicated at the 17 March 2020 General Purposes and Audit Committee that he was proposing a limited assurance opinion for 2019/20 indicating concerns on the operation of internal controls. The Financial Consultant's brief included a review of the underlying budget setting process, budget monitoring and reporting process together with proposals for an improved medium-term financial planning process. The Financial Consultant's report presented to the Panel concluded that the financial governance is currently inadequate in relation to some areas of financial planning, budget setting and budget monitoring and identified 75 recommendations for change. During the drafting period of this report the Financial Consultant's report and the Head of Internal Audit's Limited Assurance Opinion were reported formally to the General Purposes and Audit Committee on 7 October 2020. The Head of Internal Audit's report was subject to detailed questioning by Members and a dedicated meeting scheduled for 20 October 2020 to discuss the Financial Consultant's report in more detail. The progress in October 2020 indicates a more robust approach is being taken to matters of concern raised to the General Purposes and Audit Committee.

During the drafting of this report the Council has taken a number of actions including

- Agreeing an in-year savings plan of £27.9 million
- Formally seeking support from MHCLG to balance both the in-year budget and to transition to a sustainable budget over the next three years
- In-year review of the capital programme
- A strategic review of Council owned companies

*R10. The General Purposes and Audit Committee must challenge management on progress in implementing the Financial Consultant's recommendations to improve the budget setting, monitoring and reporting process and actions to address the Head of Internal Audit's concerns on internal controls.*

## Other auditor concerns

As part of the audit we have also identified further areas of concern which impact on the Council's financial sustainability.

### Treasury management

Local authorities may borrow monies for any purpose relevant to its functions or for the purpose of the prudent management of financial affairs. The Prudential Code and Treasury Management Code set out requirements for local authorities including the need to prepare a Treasury Management Strategy. Looking at the Council's Treasury Management Strategies, the amount of borrowing has increased in recent years with further borrowing planned for future years.

	2016/17 actual £ million	2017/18 actual £ million	2018/19 actual £ million	2019/20 forecast £ million	2020/21 estimate £ million	2021/22 estimate £ million	2022/23 estimate £ million
Borrowings	968	987	1,357	1,513	1,791	1,989	2,035
Increase in borrowing		19	370	156	278	198	46
% change on previous year		2%	37%	11%	18%	11%	2%

The large increase in borrowings was for four purposes: Revolving Investment Fund; Growth Zone; Asset Investment Strategy; and General Capital Programme. The Growth Zone borrowing is estimated to be £121 million by the end of 2020/21 and the underlying assumptions and actions will need revisiting following the impact of the pandemic.

#### *Revolving Investment Fund*

The Revolving Investment Fund (RIF) aims to support the delivery of the Council's strategic aims specifically for housing and other developments. The RIF is the mechanism by which the Council lends money to developments and the RIF is funded by Council borrowing. The RIF lending is shown below:

Revolving investment fund	2017/18 £ million	2018/19 £ million	2019/20 £ million estimate	2020/21 to 2022/23 £ million Estimate
Total – RIF	45.7	119.7	218.7	223.2

The significant elements of the RIF have been invested in three schemes: Brick by Brick; Croydon Affordable Homes; and Taberner House. All three schemes involve complex commercial transactions and individual business cases have been taken to Cabinet however there is little evidence of challenge by Members in meetings (Full Council or Cabinet) on the deliverability of the schemes or the impact of each scheme on the long-term financial position of the Council. Increased borrowing to the schemes within the RIF is reported however there is no evidence of challenge on whether previous borrowing to the scheme has delivered the intended benefits or whether the third parties' financial position remains sound before agreeing further borrowing. A scheme of the value of the RIF should have a risk assessment which is updated regularly to reflect changes in market conditions. No such risk assessment has been undertaken. In our view this is another example of a lack of financial rigour being exercised by Members. The risk management of the RIF needs to be considered before agreeing further loans.

The principle of the RIF was to lend on at commercial rates whilst borrowing at lower rates with the net returns contributing to the Council's financial position. The interest receivable amounts continue to increase however the outstanding debtors indicate that Brick by Brick has not made any interest payments with £5 million owing at 31 March 2019.

#### *Asset Investment Strategy*

The Medium-Term Financial Strategy for Croydon 2018 – 2022 established an Asset Acquisition Fund of £100 million to invest in property to generate an ongoing income stream for the Council.

*'The Council has an aspiration to secure medium to long term revenue returns from sound property investment principally within the Borough. If chosen carefully the revenue returns should be consistent and less prone to fluctuation due to the protection within the lease agreements. These returns will be key to future revenue income and enable expenditure on services.'*

*'The Council will be looking at the opportunity that property investment offers to help generate a secure revenue stream over the medium - to long-term. However, less secure assets that offer future revenue potential with higher returns that also unlock the development of strategic sites will also be considered. These may typically be part vacant properties in district centres that requiring some degree of refurbishment or additional development to secure their full letting potential. Each opportunity will be assessed against a matrix. The matrix will have scoring against each of the key elements and categorise into Excellent, Fair, Good and Marginal investments.'*

The original Asset Investment Strategy set out the criteria for assessing each proposed investment property and was approved by Full Council in October 2018. The meeting had reached the time specified in the constitution for it to conclude before there was discussion of the medium-term financial strategy to establish the £100 million asset acquisition fund or the Asset Investment Strategy. The guillotine procedure was therefore used to close the meeting and the reports were approved without further discussion. This procedure is in line with the Council's constitution however a significant strategy such as the medium term financial strategy and asset investment strategy should have been re-considered at a time where Members had sufficient time to challenge whether the risk assessment and management within the strategy was sufficient and again indicates a lack of urgency in understanding the Council's financial position. It also indicates again the level of scrutiny and challenge by Members in respect of significant expenditure was not good enough in terms of challenging decisions that were high risk in the context of the Council's financial position.

During 2018/19 two purchases were made using the Asset Investment Strategy: The Colonnades with an asset value of £46 million in November 2018 and the Croydon Park Hotel with an asset value of £30 million in August 2018. The Croydon Park Hotel was purchased by Leader decision in August 2018 under delegated powers agreed at the July 2018 Cabinet meeting and reported to the September 2018 Cabinet meeting. The decision was subject to Scrutiny and Overview Committee call-in during September 2018 and the strategy covering the purchase was approved in October 2018.

Minutes of the Scrutiny Committee *noted that the paper (explaining the Council's proposed decision-making matrices) was produced after the first bid had been lodged and with this paper it would not have been possible to judge the soundness of the acquisition.* Whilst opportunities can arise at short notice, good governance would require the strategy to be approved prior to the first purchase.

The Covid-19 pandemic restrictions reduced the income from these investments as The Colonnades (a retail park) was closed and in June 2020 the Croydon Park Hotel operator went into administration.

The minutes also show that the Scrutiny and Overview Committee raised queries and received assurances which were accepted. From the Autumn 2020 perspective some of the queries raised at the Scrutiny and Overview Committee appear pertinent and the Council should review the purchase of Croydon Park Hotel to identify lessons learned to strengthen the due diligence undertaken for any future purchases. The investments in The Colonnades and Croydon Park Hotel were not grounded in a sufficient understanding of the retail and leisure market and have again illustrated that the Council's strategy to invest its way out of financial challenge rather than pay attention to controlling expenditure on core services was inherently flawed.

#### *Affordability*

The Treasury Management Strategy is presented at Cabinet prior to being approved at Full Council. The strategy includes Prudential Indicators which enable officers and elected members to make decisions on the affordability of the proposed strategy. There is little evidence of Members challenging the safe use of borrowing powers when approving the Treasury Management Strategy reports in particular:

- The Capital Financing Requirement (CFR) continued to increase, and was breached in 2017/18, 2018/19 and the outturn CFR presented in the 2020/21 Treasury Management strategy indicates that £10 million more borrowing was taken out than required
- The Authorised Borrowing Limit indicator was breached by £2 million in 2018/19
- The General Fund impact of Prudential Borrowing on Band D Council tax levels shows the cumulative impact of increased borrowing between 2017/18 and 2020/21 being an increase of £124.35 on a Band D council tax.

The key prudential indicators show an increasing level of debt that is at or just above the levels considered prudent. This is a complex area and the lack of challenge from Members may indicate that specific training in this area is needed to enable Members to provide an appropriate level of challenge on the affordability of the Treasury Management Strategy.

The Council is required by statute to make a prudent provision for the repayment of its debt and to have regard to MHCLG guidance in calculating the Minimum Revenue Provision (MRP) and to publish its policy annually. (Statutory guidance issued under section 21 (1A) of the Local Government Act 2003 and the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003). The Council made changes to its 2019/20 MRP policy in respect of how much MRP is charged for borrowing related to loans to third parties and loans to purchase investment properties. The policy indicates that loan repayments from third parties and income from investment properties leads to no MRP being set aside. Earlier we noted that there were significant loans to Brick by Brick which have not been repaid and to date the Council has not received any dividends from Brick by Brick and we noted that the Croydon Park Hotel had entered administration resulting in a significant reduction in investment income and increased costs. Taken together it is difficult to see how the Council's approach of no MRP for loans to third parties and for investment properties is prudent.

	2016/17	2017/18	2018/19	2019/20	2020/21
	£ million				
Interest payments	36.8	37.0	40.2	37	43
MRP	7.4	8.0	8.9	10	11

*R11. The s151 officer should revisit the Growth Zone assumptions following the pandemic and make recommendations to Cabinet and Council for the continued investment in the scheme.*

*R12. The s151 officer should review the financial rationale and associated risks and make recommendations to Cabinet and Council on whether the Revolving Investment Fund should continue.*

*R13. The s151 officer should review the purchase of Croydon Park Hotel to identify lessons learned to strengthen future due diligence arrangements.*

*R14. The Cabinet and Council needs to re-consider the Treasury Management Strategy for the ongoing affordability of the borrowing strategy, the associated risks and identify whether alternative options can reduce the financial burden.*

*R15. The Chief Executive should arrange detailed Treasury Management training to assist Members to better understand and challenge the long-term financial implications of matters reported within the Treasury Management Strategy.*

*R16. The s151 officer should revisit the Minimum Revenue Provision policy to demonstrate that a prudent approach is being taken.*

### **Subsidiary companies**

In recent years the Local Government sector has seen a number of subsidiary companies being established. The Council has established a number of subsidiary companies with the aim of generating additional income. The governance of the subsidiaries, whether wholly or partially owned by the Council, is vital to both understand whether the arrangement is delivering the intended benefits and to safeguard the Council's interests held by the subsidiary. The Council has established a complex group structure and we found little evidence that the complexity and associated risk to the Council's financial position is understood by members or officers based on two specific examples.

#### *Brick by Brick Croydon Limited*

Brick by Brick Croydon Limited (Brick by Brick) was set up as a limited company with the Council being the sole shareholder to deliver housing development aiming to address the shortage of housing and the initial business case was presented to Cabinet in September 2014 with the governance arrangements being reported to Cabinet in June 2016. By the 2020/21 Budget, the governance arrangements had been strengthened through the Shareholder Investment Board and a Client Monitoring Group.

As the sole shareholder of Brick by Brick the Cabinet receives the annual business plan from Brick by Brick which based on a review of the Cabinet minutes is subject to a limited level of challenge. We would expect the Council to have clear governance arrangements on how its interests (as sole shareholder) are safeguarded and the extent to which the original aims of the business plan are being achieved. We would also expect a formal reporting mechanism from the Council nominated Directors back to the Council. Examples where the Council has not shown sufficient scrutiny of its wholly owned company include:

- The initial intention was for a proportion of the houses developed to be affordable housing through Shared Ownership. In January 2020, when potential purchasers were unable to obtain mortgages for the properties, the Council became aware that Brick by Brick had not registered Brick by Brick as a Shared Ownership Provider. This failure indicates a lack of understanding of the requirements and how the regulatory context developed over time.
- The original business case approved by Cabinet in March 2015 included the recommendation that the key legal and structural components of the company will not be more than 50% financed by the Council. By the 2017/18 business plan, the funding mechanism was 75% borrowing and 25% equity. The ongoing financial rationale for the Council to provide 25% equity should be reviewed from the perspective of the Council's financial position.
- The annual business plans continue to extend the time that Brick by Brick will be able to utilise receipts against future funding requirements or will repay the loans. The delay in the company being self-financing and repaying loans should be reviewed to determine whether the Council can continue to afford its investment in Brick by Brick

Business Plan year	Year Brick by Brick will cover funding from receipts	Year Brick by Brick will repay loans
2018/19	2019/20	2020/21
2019/20	2021/22	2021/22
2020/21	2022/23	2024/25

- The Council agrees individual loan agreements for each scheme with Brick by Brick which include loan covenants. Based on the loan agreements, we have reviewed a number of loans where covenants have not been met. The Council should be monitoring compliance with loan covenants and reporting breaches to Members. For example
  - a covenant requiring audited accounts within 90 days of the year end. At the end of August 2020 (153 days after the year-end) the audited accounts for Brick by Brick were not available.
  - a covenant requiring loan interest to be paid at the completion of the scheme. At 31 March 2020, the Council is yet to receive loan interest payments from Brick by Brick of £14.4 million of which £5 million was outstanding at 31 March 2019.
  - The loan agreement sets out the loan repayment date. At 31 March 2019 of the £221 million loan agreements between the Council and Brick by Brick, £99 million had been drawn down with a further £94 million drawn down in 2019/20. Based on our review of the loan agreements, £110 million of those loans were due for repayment by the date of this report and had not yet been received by the Council. Repayment dates can be varied by written consent however we have been unable to obtain confirmation from the Council that written consent was formally requested or provided to vary the loan agreement repayment date. Brick by Brick's annual business plan updates the expected date when all loans will be repaid and the Cabinet approval of the annual business plan has been considered by Brick by Brick to imply consent. As the loan agreements are legal documents it would be reasonable to expect any variation to be formalized. The Council has confirmed that its opinion is that any variation of the loan repayment date would require formal documentation. The Council should take action to clarify the existing loan repayment position with Brick by Brick and agree formal processes for any future variation in loan repayment date.
- The initial business case approved by the Council expected Brick by Brick would build and sell properties and pay dividends to the Council from the profit generated. The slippage in progress in building and selling properties has delayed Brick by Brick making a profit and no dividends were received by the Council adding further pressure to the Council's financial position.
- Brick by Brick set up its own internal trading arm, Common Ground Architecture. The first reference to this is in Brick by Brick's business plan for 2018/19 presented to Cabinet in February 2018. By February 2019, the 2019/20 Business Plan refers to the trading arm taking on external clients. We have found no evidence that the Council, sole shareholder of Brick by Brick, considered the impact on the Council's interests or the risks inherent in establishing a trading arm that takes on external clients or whether the trading arm is in line with the Council's strategic intention for Brick by Brick.

- At the Cabinet in July 2020, the Council made a decision to incur an additional £30 million of borrowing to purchase properties from Brick by Brick to increase the affordable housing supply available. This is not in line with the original business case for Brick by Brick approved by Members in March 2015. The most recent business plan presented to Cabinet states Brick by Brick *'will offer first refusal on all of our homes to the local authority in order to help address local housing need'*. The underlying financial case from the Council's perspective for the purchase of these properties did not address the circular nature of the Council taking out borrowing to lend to Brick by Brick to build the properties and then the Council taking out additional borrowing to purchase properties from Brick by Brick. This should be urgently reviewed.

The continuing financial business case from the Council's perspective for Brick by Brick should be urgently reviewed before agreeing any further borrowing.

#### *London Borough of Croydon Holdings LLP*

As part of the Revolving Investment Fund, the Council has lent money to schemes designed to support the supply of housing. Two of the schemes that had £55.1 million of loans outstanding at 31 March 2019 were Croydon Affordable Homes LLP and Taberner House LLP. The Council has a 10% holding in each company and the Council's holding is held by a company, Croydon Holdings LLP, which itself is wholly owned by the Council.

The increasing complexity of the group structures, the interaction between different subsidiaries, the longer-term financial impact for the Council and how to safeguard the Council's interests is not clearly understood. The subsidiaries are covered by Companies Act legislation and there is a knowledge and experience gap which puts the Council at risk of unintended consequences. For example, the Council does not have direct access to Croydon Affordable Homes LLP despite providing significant loans and the Council's representation is through London Borough of Croydon Holdings LLP. In December 2019, London Borough of Croydon Holdings LLP was dissolved by compulsory strike off by Companies House for a failure to comply with filing financial accounts and the assets of this company were transferred to the Crown. The Council is taking action to recover the company and associated assets but was unable to quantify the assets and liabilities of this company (£100) until late October 2020.

Having a company dissolved by compulsory strike off is a failure of governance and we have not identified evidence that the dissolution of London Borough of Croydon Holdings LLP has been reported to Cabinet or the General Purposes and Audit Committee. The Council has failed to establish adequate arrangements to govern its interests in subsidiaries and there is therefore not an appropriate mechanism for members to challenge either the arrangements or the continued extension of establishing additional companies.

*R17. The Cabinet and Council should reconsider the financial business case for continuing to invest in Brick by Brick before agreeing any further borrowing.*

*R18. The Cabinet and Council should review and reconsider the ongoing financial rationale for the Council in the equity investment arrangement with Brick by Brick.*

*R19. The s151 officer and monitoring officer should monitor compliance with loan covenants with Brick by Brick and report breaches to Members.*

*R20. The Cabinet and Council should review the arrangements to govern its interest in subsidiaries, how the subsidiaries are linked, the long-term impact of the subsidiaries on the Council's financial position and how the Council's and taxpayers interest is safeguarded.*

During the drafting of this report the Council has engaged with the matters raised and has taken a number of actions including

- Engaged external consultants to undertake a strategic review of the Council's group of companies and entities
- Commissioned external support to prepare accounts for all seven companies that form part of the Croydon Affordable Housing company structure including preparing a set of financial statements to enable London Borough of Croydon Holdings LLP's registration to be reinstated

## Governance

The Council commissioned a Governance Review Panel to review governance arrangements and the final report was presented to Full Council in March 2020. The Introduction to the report states:

*'it is clear that there is nothing fundamentally wrong with how Croydon takes its decisions... But there was nevertheless considerable dissatisfaction with the present arrangements.'*

*'The Panel does not believe that the answer lies in structural change to governance... but rather lies in improving the current culture around decision making.'*

It is clear that there are improvements needed in the culture of decision making as it relates to financial sustainability. The Council's Financial Position has deteriorated to the level where external support from MHCLG is required. Whilst the covid-19 pandemic has created significant financial pressures for local government, the depth of the issues facing Croydon existed prior to the pandemic. The Council has shown collective corporate blindness in missing opportunities to tackle its financial position across three key areas:

- 70% of the Council's spend is on demand led services (children's and adult social care) where the focus has been on improvements in service delivery without sufficient focus on controlling the related costs
- The 'Place' area of Croydon became an area of high focus with significant financial resources invested to deliver the Council's vision but this was not supported by good governance and assessment of risk on how the resources were invested to deliver the intended outcomes
- Financial governance during the austerity period was focused on lobbying government which of itself is for the Council to decide, the Council should have taken actions to contain spending within the funding provided.

There have been opportunities in recent years where the Council could and should have taken action to mitigate the financial pressures that have led to the 2020/21 in-year pressures exceeding the Council's reserve position. Examples include:

- The Council failed to address the underlying causes of service overspends which during 2017/18, 2018/19 and 2019/20 had a combined overspend of £59.3 million. The overspends were reported in budget monitoring reports but there is little evidence of Member challenge or holding officers to account for the underlying reasons for the overspends or for taking action to address and mitigate the impact in future years.
- When UASC service costs were seen to exceed the funding available, the Council's response was to lobby government for increased funding. Whilst of itself this is appropriate action, the lobbying should have been combined with action to contain service delivery costs within the funding available. The financial pressure created by large numbers of UASC was clearly understood and reported however there is little evidence of challenge by Members of the appropriateness of the costs being incurred either at the budget setting or budget monitoring stage.
- Auditor concerns on the low level of reserves were reported to officers and Members of the General Purposes and Audit Committee in July 2018. The resulting recommendations remained outstanding at the end of August 2020 indicating a lack of urgency.
- The adverse qualification of the value for money conclusion was reported by the external Auditors to the General Purposes and Audit Committee in October 2019. Adverse qualifications are not common in local government and there was limited challenge of the auditor or officers at the meeting and no evidence that meaningful action was taken to address auditor concerns or to escalate the significance of the auditor concerns to the wider members of the Council.
- The 2019/20 Quarter 2 financial position reported to Cabinet in November 2019 showed an in-year overspend of £10.4 million. There was no indication that Members understood the implication of using the remaining general fund reserve on in-year pressures and this in our view contributed to the lack of urgency.
- The 2019/20 Quarter 3 financial position reported to Cabinet in January 2020 reduced the in year overspend by £8 million. This is an unusual movement and there was limited explanation in the report and no evidence of challenge to understand the validity of the adjustments to achieve the revised position.

- The outturn report for 2019/20 was reported to Cabinet in July 2020 and showed movements from the position reported previously. There was no evidence of Members challenging the movements. The outturn report presented to the Financial Review Panel in June 2020 highlighted service overspends that indicated poor budget management and set out corporate adjustments of £17.7 million to reach the outturn position. None of the officers or Members present at both the Financial Review Panel and the Cabinet drew attention to the significant in-year corporate adjustments. The challenge of the outturn figures was limited and, in our view, contributed to the lack of urgency in addressing the financial position.
- The outturn report did include a statement from the Section 151 officer that referred to the challenges identified in the budget together with commentary that if the proposed actions were not sufficient a section 114 report would be required. Given the size of the financial gap, the Scrutiny and Overview Committee reviewed the report on 25 August 2020 where in response to a question the Section 151 officer confirmed she was not confident that a section 114 report could be avoided. The Committee raised pertinent questions in relation to the financial position but chose not to refer the reports back to Full Council. The seriousness of the financial position would in our view have warranted a Full Council discussion.
- The 2020/21 budget was presented at both Cabinet and Full Council in early 2020. The budget included a larger savings target than previously delivered and some optimistic income assumptions. From a review of the minutes there was limited challenge on the credibility of the budget and no evidence that members who were aware of the adverse auditor qualification brought this knowledge to challenge the proposed reserves position indicating a lack of understanding of the financial position.
- The Treasury Management Strategy aimed to deliver the Council's ambitious vision and involved a significant increase in borrowing with increasing risk to the Council. The longer-term risk to the financial position associated with the borrowing was not clearly set out nor was there challenge to the reported prudential indicators which show that the Council's approach to borrowing was at or above prudent levels.
- The Medium Term Financial Strategy for Croydon 2018-2022 established the Asset Acquisition Fund and the Asset Investment Strategy. The first purchase under the strategy was Croydon Park Hotel in August 2018 which was before the strategy was approved by Full Council in October 2018 using guillotine procedures. Good governance would require a strategy to be approved prior to the first purchase indicating a lack of transparency in the decision-making process.
- The Treasury Management strategy included the approach for the Council to borrow to fund the Revolving Investment Fund where significant amounts are invested through groups and subsidiaries. There was a lack of understanding of the complexity of the arrangements, the risk associated with the arrangements, how to safeguard the Council's investments, whether the increased borrowing achieved the intended outcomes or the impact of increased borrowing on the Council's future revenue position. The continued approval of the expansion of the Revolving Investment Fund showed a collective corporate blindness to the risks the Council is exposed to.
- London Borough of Croydon Holdings LLP was dissolved by compulsory strike off due to a failure to file accounts. The facts or progress in remedying the situation have not been reported to Members or subject to scrutiny.

The missed opportunities represent deficiencies in financial planning, financial management, risk assessment, communication between officers and Members and challenge from Members before approving the strategies and plans that have led the Council needing in-year external financial support. Action must be taken to restore the Council to a sound financial position supported by effective governance.

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# **NON-STATUTORY REVIEW LONDON BOROUGH OF CROYDON**

**Chris Wood  
Lead Reviewer**

**November 2020**

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## 1 Introduction

- 1.1 In accordance with the terms of reference set out in your letter of appointment, dated 26/10/20, I have led a small team, supported by your officers in a rapid review of LB Croydon Council. The team has held a large number of meetings and reviewed a large array of documents. This Report sets out the details of our findings.

## 2 Croydon's Response to the Rapid Review

- 2.1 It is clear that Croydon Council has had significant failings in leadership and management (particularly in sphere of financial management) and its governance and assurance mechanisms have failed in identifying, escalating and addressing risk.
- 2.2 The Review Team has received the highest level of co-operation from the Council. During the review period the Review Team has held 60+ meetings with key officers and elected Members at the Council and a small number of external stakeholders. In all instances the Review Team has been met with a high degree of transparency, honesty and candour. The Review Team has received prompt responses to requests for documents. There are no signs of the Council being in denial about the perilousness of its position and there is strong commitment from all quarters to resolve the outstanding issues. At the same time there is a good deal of anger and frustration amongst many staff and Members that the Council has been led into such a position.
- 2.3 Through the course of the review we have worked collaboratively with the Council's CEO and provided regular feedback on the development of our findings. The Council has been quick to respond to this feedback and some of our recommendations have already been acted upon.

## 3 Overall Findings and Recommendations

- 3.1 We **can give you assurance** that Croydon Council recognises the perilousness of its position and we saw lots of evidence of Officers and Members working energetically to mount an effective recovery.
- 3.2 The recovery effort is in its early stages and therefore the Review Team **cannot offer full assurance** or confidence that the task can be achieved. We have concerns about the capability and capacity of the Council to organise and manage the recovery, but this is a concern which is shared by many of the people we spoke to. Croydon Council has a poor track record of robust financial management and this will need to change if it is to effect a successful recovery. That said, a good deal of additional support has been mustered by the CEO, in Finance, Adults and Children's services and at the corporate centre.

- 3.3 During the time of our review the Auditors have published a Report in the Public Interest. The PWC report reviewing the Council's commercial activities has also been completed. The Council's Finance Director has issued a section 114 notice, freezing all but essential spending. An internally produced report on strengthening financial controls has been produced and agreed by Council members. The Chief Executive has commissioned the Local Government Association to undertake an "initial investigation into corporate management actions" in the lead up to the financial crisis. The Chief Executive is also in the midst of producing a proposed reorganisation of the staffing structure and the assembly of a single improvement plan, which will incorporate all of the recommendations for change and improvement. The Review Team supports and endorses all of the recommendations in these reports.
- 3.4 With regard to the Capitalisation Directive, **we recommend that you should agree to this.** We recognise that owing to the Council's poor track record in financial management, that this decision carries with it some risks i.e., the Council may fail to solve its financial crisis. Therefore, our recommendations seek to mitigate this risk through proposing continued oversight and scrutiny of the Council's progress with regular updates to your department.
- 3.5 It is our view that there is no credible alternative option to capitalisation. We gave consideration to the phasing of capitalisation consents but felt this not possible as the Council has a substantial budget gap in the current financial year. In order to set its budget in February for 21/22 it will need to have knowledge of the availability of capitalisation going forward. Given the scale of the capitalisation sought we recognise that this is going to be exceptionally difficult for the Treasury, at a time when demands on Government spending and borrowing are so high.
- 3.6 We have put together some short to medium term milestones (Appendix 1 to the report) that the Council should be expected to meet. If it fails significantly in meeting these milestones, (particularly managing within budget) then we would recommend that you intervene by installing a Commissioner or team of Commissioners as appropriate, to take over decision-making in key areas.
- 3.7 Our additional recommendations are as follows: -
- a) The Council should produce a single detailed improvement plan in response to all external and internal recommendations and that this should be in place by no later than Dec 15<sup>th</sup>, 2020.
  - b) The Council should appoint an independent panel of specialist non-executive advisers, who should remain in place for a minimum of 3 years to advise and oversee progress on the improvement plan.
  - c) The Council's budget for 21/22 should receive the scrutiny of the Council's Finance Review Panel, prior to being presented to the Cabinet and Council and the comments of the Panel should be presented with the budget report.
  - d) The CEO should produce a revised organisational structure which ensures:
    - the Section 151 officer reports directly to the CEO;
    - that the executive leadership of the Council is strengthened and has sufficient capability, capacity and experience to lead the recovery;

- that there are officers at senior level with sufficient commercial experience and expertise to properly oversee the Council's commercial investment portfolio;
  - this revised structure should support the establishment of a programme management back office resource which is of sufficient capacity to properly enable and oversee the successful implementation of the single improvement plan;
  - the Council's Finance Team should be strengthened both in terms of expertise and capacity;
  - the Leader and interim CEO should produce a timetable for key executive posts to be filled permanently.
- e) The Council should immediately strengthen its oversight of Brick by Brick by improving communication, monitoring contract information and development milestones and having experienced Non-Execs on the BBB board to ensure:
- the appointment of a Director of Finance;
  - robust BBB financial (P&L and Cashflow) forecasts;
  - further asset review work to test asset values;
  - a State Aid compliant capital structure (possibly involving equity as per the original business plan);
  - a review by the new Finance Director of 3rd party future funding avenues to avoid premature value destruction;
  - restoration of a collaborative relationship to meet (at least some of) the original goals of providing affordable housing and value creation.
- f) The Council should urgently consider and implement alternative uses for the Croydon Park Hotel, including the recent business case to use it for Emergency Temporary Accommodation.
- g) The Council review its Assurance process and produce a more robust Assurance Framework to ensure that the checks and balances that should be in place to anticipate, alert and escalate any significant potential failings are effective. This Assurance Framework should be agreed with the Council's budget for 2021/22. Within this the Council should give consideration to appointing a Chair from outside the majority group to its General Purpose and Audit Committee.
- h) The Council should adopt the practice of the annual external audit report being reported to full Council and should formalise the facility for the CEO, Monitoring Officer and the Section 151 officer to meet with the key audit partner at least annually.
- i) The Council should undertake a review within 6 months of the implementation of its integrated social care IT systems (ControCC and Liquid Logic) intended to link activity to Finance.
- j) The Council should undertake a comprehensive review of its eligibility Criteria for Adults Services within 12 months.
- k) The Council should identify opportunities to generate capital receipts to fund capitalisation in lieu of borrowing where possible. It should also review its capital programme to reduce the need for additional borrowing more generally and thereby reduce the pressure on the revenue budget.

## 4 Background

- 4.1 The financial pressures and problems encountered by LB Croydon are well documented and have now been acknowledged and owned by the Council. It is not uncommon for local authorities to feel the financial pressure of demand on Children and Adult Social Care budgets, but in Croydon these pressures appear to have been poorly managed. Additionally, many local authorities have felt the added burden on services brought about by the Covid 19 health crisis, but few have crumbled financially in the way that Croydon has. Grant Thornton reported in the Public Interest Report (PIR) Croydon's "fragile financial position – (was not caused but) – exposed by the impact of Covid-19".
- 4.2 Croydon adheres to the CIPFA Financial Management Code in seeking to strategically manage its finances through a Medium-Term Financial strategy. In setting annual budgets it has sought to manage and respond to pressures, by budgeting for growth and seeking to make efficiencies where possible. Many officers and Council members told us that the Council's track record in managing to budget or achieving savings is very poor. This is evidenced by recurrent and substantial overspends, particularly with social care budgets.
- 4.3 Like other Councils, Croydon has turned to more commercial income generation to assist in bridging the gap between expenditure and income. Some of these investments (e.g. The Colonnades shopping centre) have been positive and generated a steady return. But others, like the Croydon Park Hotel and its flagship Housing Company, Brick by Brick have not delivered to expectations. That said, it is our view that the Council has managed some of these initiatives (most particularly Brick by Brick) extremely poorly.
- 4.4 All Councils encounter unforeseen spending pressures and in anticipation of this, they will prudently accumulate reserves. Croydon has historically maintained a very low level of reserves and so has had little to help it resist the financial crisis it is currently experiencing.
- 4.5 In its medium term financial planning Croydon Council appears to have laid great store on its Incremental Financing Scheme through the Croydon growth zone, which anticipated a substantial growth in Business Rates income, the centrepiece of which was to have been a new Westfield Shopping Centre. Changes in economic circumstances have meant that much of the new development is stalled, including the Westfield development.
- 4.6 **It is clear that in recent history Croydon Council has failed to manage its finances adequately in many of these areas.** It is a Council that is said to be unfamiliar with taking and implementing difficult financial decisions and as a consequence it has engendered a culture of poor budget management and poor financial control.

- 4.7 There seems to be a unanimity of view that these failings are attributable to the poor leadership and poor management of the Council over a number of years. It is said that the strong Leader and Cabinet model allowed the former Leader to create an inner circle of a small number of Cabinet members, who have been very controlling in their management of the Council and its finances. There was a clear desire to pursue an ambitious growth agenda for Croydon and when elements of this growth could not be realised, rather than increased caution, it seems there was a continued desire to accentuate the positive. We heard many accounts of officers being asked to re-word Cabinet reports to present the most favourable picture. It is evident that the tone of many financial reports to Cabinet do not accurately reflect the seriousness of the Council's financial position. Many Council officers and members from both sides of the Chamber have stated their shock at the revelations of the Grant Thornton Public Interest Report.
- 4.8 There are a number of checks and balances in the management of Councils to guard against serious breaches in Governance and/or good financial management. Executive Officers carry statutory responsibilities; the Council has a Scrutiny function as part of its Governance; it has a General Purpose and Audit Committee; and external auditors form a key part of the financial assurance framework. These checks and balances appear not to have worked. The statutory officers did not assert their powers. It is only in the last few weeks that the Council's Finance Director issued a section 114 notice on the Council, freezing all new expenditure as the gap in this year's budget continues to widen. Arguably this notice should have arrived earlier. The Scrutiny Committee, whilst calling decisions in were not forceful in their challenge and did not refer key decisions back for the consideration of full Council. The Audit Committee appears to have been similarly unchallenging. Finally, the external auditors whilst raising concerns over a number of years arguably could have been more forceful in escalating their concerns. That said, Grant Thornton's Report in the Public Interest has finally brought matters to a head.

## **5 Rapid Review Terms of Reference**

- 5.1 You asked that the Review should focus on 5 areas: -
- a) Governance
  - b) Culture and Leadership
  - c) Financial stability
  - d) Service performance
  - e) Capacity and Capability to improve

Below, we offer you our judgement and findings in each of these areas in some detail.

## 6 Governance

- 6.1 LB Croydon is a labour controlled Council and up until recently, had a long-standing Council leader who is a highly experienced local politician. The Council adopted a strong leader and Cabinet model for the Governance of the Council. The Labour Group has a large majority over the Conservative opposition, but it appears to be a healthy opposition, keen to scrutinise and hold the majority group to account. We observed 2 full Council meetings and two Cabinet meetings, and the Labour Group has appeared respectful and inclusive in working with the opposition and allowing itself to be held to account. The Cabinet meeting was characterised by individual Cabinet members leading on introducing and answering questions on their reports and the Shadow cabinet is present. Exchanges appeared robust, but respectful. All that said, we were also told that the tone of these meetings had changed in recent times. Members of both parties and senior officers have reported to us the existence in the past of an “inner circle” of the (then) Leader and 3 Cabinet members, who exercised a great deal of control of the Council’s finances and championed the cause of the Council’s commercial activities including Brick by Brick.
- 6.2 The Council did commission a Governance Review (at the end of 2019) which published its report in March 2020. This review, entitled, Enhancing Democracy, Increasing Participation, which was independently chaired made a number of recommendations to better engage residents and a wider group of elected members in policy discussions and decision making. The review was not asked to consider the operation of the “strong leader and cabinet model” as opposed to other Governance models.
- 6.3 From the outside, Croydon Council looks like many of its counterparts with regard to its Governance structure and the mechanisms for assurance particularly in relation to financial planning and management. However, it is clear that these structures and mechanisms failed in anticipating and managing the financial crisis.
- 6.4 The then Chief executive, the Director of Finance and the Monitoring officer, were each in their roles for the first time. With no intention to impugn the capability of these officers, it was a relatively inexperienced team. This may account in some part for delays in interventions.
- 6.5 Over the last few months, the former CEO has left the authority to be replaced by a very experienced interim appointment. More recently the former Leader stepped down and a new Leader has been elected. The Council is at the commencement of a major transition. Consequently, much is in a state of flux and the Review Team have been unable to give unequivocal assurance of the robustness of systems and culture going forward as many of these are at an embryonic stage of change.

6.6 The Council's Assurance process is said to rest on a number of different activities under the umbrella of a Governance Framework. The recent history of Croydon Council would suggest the assurance process has been found to be unfit for purpose as it has failed to identify, alert and escalate risk in order that the scale of problems faced by Croydon Council can be anticipated and managed in order to avoid a crisis. In fact, as is noted elsewhere often the language and tone of reports on finance matters sat at odds with the seriousness of the situation. Whilst accepting that it is people that make these processes work, it does seem that given the failure of these processes, the arrangements for Assurance need to be reviewed and re-mapped in a single Assurance Framework document. As part of this review the Council should give consideration to appointing a Chair from outside of the majority group to its General Purpose and Audit Committee. We also recommend that the Council strengthens its relationship with its external auditor and is an early adopter the recommendations in the recently published Redmond Review, taking the annual audit report to full Council and formalising a regular meeting between the Council's CEO; Monitoring officer and Section 151 officer with the Key Audit Partner.

## **7 Culture and Leadership**

- 7.1 The Grant Thornton Public Interest Report referred to, "a collective corporate blindness". In a rapid review it is difficult to gain more than a strongly impressionistic view of the organisational culture and strength of leadership. In the period of the review the former Leader stood down as did the former Cabinet member for Finance. The new Labour Leader was elected by the group on a very narrow majority, which may suggest that the group is divided, but all the outward signs are that the new Leader has the support of her group who are recognising the crisis and are pulling together in the best interests of the borough. The new Leader has put together a new Cabinet.
- 7.2 We were told that a higher proportion of the Croydon workforce is resident in the borough, than would be typical of other London Boroughs and through this there is a good deal of loyalty to the Council. Following the publication of the Public Interest Report, a good deal of anger was evident in Webinar discussions that the Leader and CEO held with different sections of the workforce
- 7.3 Following the departure of the former CEO, over the summer, the Council has appointed a highly experienced interim CEO, who is enjoying support and praise from all quarters. The Council also has a new interim Director of Children's Services and an interim "Assistant CEO". All of these changes are adding to the strong feeling that Croydon is "under new management". The CEO has commenced a review of the organisational structure and commissioned and initial investigation into corporate management actions in the period leading to the current crisis.
- 7.4 With regard to the culture of the organisation, the officers and members we met were happy to work and serve the borough, but we heard recurrent references to "a controlling culture" in the past which it was claimed emanated from the Council's former leadership.

## 8 Financial Stability

8.1 Financial instability is at the core of LB Croydon's recent difficulties. The Public Interest Report described, "deteriorating financial resilience over a number of years". In the terms of reference for the Review a set of specific questions, were posed in relation to the Council's finances and our responses to these are detailed below: -

<p>1. What level of confidence can the department have on the Council's assessment of its financial position, particularly its estimate of their budget gap, for 2020/21 and 2021/22?</p>	<p>This is a changing picture. The 2020/21 gap after two quarters is assessed as £30m; but taking account of likely further risks the Director of Finance estimates, this may be more like £66m. The Council has set up "Budget Development" meetings to consider savings proposals from Departments. The first round of these meetings has not been successful with few Departments bringing forward savings proposals.</p> <p><b>Issues</b></p> <ol style="list-style-type: none"> <li>1. 2020/21 budget was unrealistic. Costs were probably understated in Adults and Children's giving rise to overspends in year. The level of savings budgeted for were very high and impacted on by Covid.</li> <li>2. The Council needs to assess the most realistic projection for 2020/21 outturn, taking account of auditor concerns. There is low confidence that the figures produced so far are sufficiently accurate.</li> <li>3. The 2021/22 forecast needs reviewing and updating based on a realistic assessment of cost and income variations.</li> </ol>
<p>2. What level of confidence can the department have in the Council's plan to mitigate pressures; including the delivery of necessary savings, the existing resources that can be deployed, and their ability to afford borrowing?</p>	<p>The Council's ability to deliver savings of the magnitude set out should be questioned. A schedule of savings has been agreed by Council amounting to £27.9m in 2020/21. These have now been revised as £17m of it had been double counted. In light of the continuing overspends across the Council (and most particularly) in the Social Care services, the Director of Finance has now issued a Section 114 notice.</p> <p>The Council needs to urgently review its capacity, particularly in the finance function and develop a plan to address weaknesses.</p>

	<p>A comprehensive review of financial systems has been undertaken by an interim public sector finance expert. The (75) recommendations from the report have been accepted and have started to be implemented.</p>
<p>3. A view on the Council's assessment of future financial risks and adequacy of their plan (or ability to plan) to manage those risks.</p>	<p>Many have expressed confidence that the interim Chief Executive is making a tangible difference to the financial culture of the Council, and members of the new Cabinet demonstrate a preparedness to take the necessary difficult decisions to improve the Council's financial position. However, there is also a realisation that this will be a big change from the past and there must be considerable risk that they are not able to turn this into action.</p> <p>There are several as yet unresolved financial risks potentially affecting the Council's financial position:</p> <ul style="list-style-type: none"> <li>• An arrangement to assign assets to the Pension Fund in lieu of cash contributions.</li> <li>• The extent of the Council's use of capitalisation of transformation costs is still under review</li> <li>• The Council has assumed no MRP in respect of commercial loans to Brick by Brick. This is being challenged by the auditors as repayments have not been forthcoming.</li> </ul> <p>The Council had an ambitious capital programme over a three year period which assumes additional borrowing of more than £500m, including further loans to Brick by Brick and a £100m Asset Acquisition Fund. The extent of this borrowing will add to the Council's budget risk and should be reviewed. The Council has recognised this risk and agreed In September to reduce the Capital programme by £150m, with a further review in December.</p>
<p>4. A view on the Council's approach to mitigating their budget gap under different scenarios for how much financial support is provided.</p>	<p>The revised MTFS includes provision for financial risks. Substantial demographic growth provision has been made in respect of Children's and Adults. £30m of demographic growth is provided for in 2021/22 and yet Children's and Adults services are already overspent in 2020/21 by £16.5m and £30m respectively.</p>

	<p>A review of Adults Social Care spend by the LGA demonstrates that Croydon are a high spender compared to the rest of the country. The Council needs to understand why its costs are relatively high and should develop plans to bring spend down to an appropriate level. This work has now begun and there is an intention to reduce spend to a more appropriate level over a three-year period.</p> <p>The Section 151 Officer should report directly to the Chief Executive in order to raise the importance of finance in the organisation.</p>
<p>5. What level of confidence the department can have on the Council's assessment of wholly owned companies, including the viability of companies to continue without any additional Council funding or loans?</p>	<p>Brick by Brick was set up as a wholly owned company of the Council. Its objective is to bring about housing growth in the Borough. The Council has funded the company through its Revolving Investment Fund which borrows money at low rates and lends on to Brick by Brick (and others) at commercial rates. The Council expected to generate surpluses from these transactions and to receive dividends. Although to date it appears that Brick by Brick has made little progress despite loans of over £200m from the Council, since neither loan repayments nor dividends have yet been received. It is believed that a considerable number of units could now either be ready for sale or close to being ready. The values of these assets need to be determined as they are currently unclear. Were Brick by Brick not to receive further funding, this would exacerbate the Company's losses, although the CEO of Brick by Brick believes that they can obtain outside funding.</p> <p>Under one proposed scheme, the Croydon Park Hotel will need further funding of approximately £1m to be re-purposed as a provider of Emergency Temporary Accommodation. This is still being examined to ensure it is safe and viable. The Colonnades development does not appear to need further funding.</p> <p>The Council's assessment of the performance of Brick by Brick has changed dramatically over the last few months, with a realisation that forecast interest payments and dividends would not be realised. The PWC review of strategic options is currently being considered by the Council. It is clear that the Council cannot simply close or walk away from Brick by</p>

	Brick. It is our view that the Council has mismanaged Brick by Brick but that does not invalidate the business concept.
6. How adequate or achievable is the Council's response to the recently commissioned 'Strategic Review of Group Companies'?	It is still early days; however, the Council appears to understand the severity of the situation it has got itself into as reflected by the issuance of the Section 114 notice. The Council officers are taking a more direct role in overseeing the various investments and are putting together business cases for review. The Council now understands that it needs to put Directors onto the Board (2 Directors were appointed at Cabinet on 25 <sup>th</sup> November) and a Finance Director into Brick by Brick to take financial control of the company and it has stopped automatically funding the loans on demand as was the case previously. More information is needed on the financial situation of Brick by Brick before an opinion on the likely success of the investment is given.
7. How robust are any forward-looking commercial strategies/plans and their longer-term approach to borrowing and investment?	<p>The Council appears to have taken on board the need to de-risk the Council's commercial and investment strategy. This is particularly evident in its response to the Croydon Park Hotel and the Colonnades, with a business case having been put together for the former and which is currently under review. The response to Brick by Brick is evolving as the level of financial information from the company is currently inadequate and the future plan depends on a clearer view of the current position.</p> <p>It is likely given the findings of the PIR report and the PWC review of companies that the Council will be encouraged to rationalise its investments to avoid further losses. However, we would recommend against premature divestment before additional information is gathered as to the value of the assets that are both held for sale and currently in development with Brick by Brick.</p>
8. A view on whether the Council's oversight and management of commercial and investment risk feels adequate or fit for purpose.	<p>The Council is unanimous in its view that the oversight and management of the commercial and investment risk in the past was inadequate.</p> <p>The on-going supervision which did take place of Brick by Brick focused on development and planning issues and did not appear to involve much</p>

	<p>or any financial discussion, exacerbated by the fact that the Company did not prepare financial cash flows for the meetings and did not replace its Finance Director when he left. This needs to be remedied urgently.</p> <p>In the case of the Croydon Park Hotel a business case has been put forward for temporary accommodation use, which may neutralize the cash flow drain.</p> <p>The Colonnades Development appears to have so far withstood the challenges of a C-19 lockdown and seems to be performing adequately given the circumstances.</p> <p>In the past there was no one within the Council tasked with overseeing the contractual loan documents made with investment companies and this needs to change. It is clear from recent actions that the Council has now recognized that it had contributed to some of the delays in Brick by Brick's business plan and it needs to allocate appropriate responsibility internally and improve the oversight as well as the communication with the Company.</p>
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## 9 Service Performance

- 9.1 Generally speaking, Croydon's services appear to perform reasonably well. Detailed performance monitoring of services has suffered with the disruption caused by the pandemic, but this is the case in many Local Authorities.
- 9.2 After receiving a very negative Ofsted report on Children's services in 2017 (judged "inadequate"), the most recent Ofsted report in at the beginning of 2020 recorded dramatic improvements over the 3 years and the service is now rated as "good". However, spend in Children's Services is (per capita) the highest in London, by some distance. The number of Children Looked After in Croydon is the highest in the capital, by some distance. Recent figures showed Croydon to have one of the highest rates of teenage pregnancies in London.
- 9.3 Like Children's Services Adult Social Care is one of the highest spending depts of its kind in London. The One Croydon Alliance, which bring together Health and Social Care Services is an innovative initiative to facilitate service integration. The Adult social care services have made some progress on integration with Health, but further progress has been frustrated by the current crisis.

9.4 Both of these key services have struggled to deliver services within budget, failing to make target savings and recording significant overspends, year after year. Whilst these have not been studied in detail, it is said that the eligibility criteria for social care services in Croydon are some way off the norm for London i.e. Croydon provides more social care services than its comparators. The Council needs to urgently review its eligibility criteria for Adult Social Care. It also needs to review its newly implemented social care IT system, which is designed to link activity to finance.

## **10 Capacity and Capability to Improve**

10.1 The scale of the transformation and change required in Croydon should not be underestimated. The Chief Executive is embarking on a “root and branch” change programme. The first phase of the internal review of Croydon’s financial systems made 75 recommendations, with more to follow. The Public Interest report made a further 20 recommendations. The PWC review of Companies has made a further 29 recommendations. The CEO is planning a reorganisation of the Council and has recently launched an independent initial investigation into corporate management actions leading up to the current crisis.

10.2 All these changes are in addition to the challenging budget reductions that will need to be made. The scale of change required in the financial circumstances the Council finds itself, would challenge even the most talented group of officers and elected members. The CEO is reviewing the capability and capacity of her senior team and in order to rise to the challenges it will need to be strengthened. Our judgement is that the senior management of the Council needs to be strengthened if it is to achieve the recovery required. It also needs to add to the current skill set, particularly in managing its commercial portfolio of interests. The raft of recommendations and plans for change need to be brought together into a single improvement or transformation plan.

10.3 There is help at hand, from the Local Government Association, who continue to support the Council and have committed to continue that support going forward.

10.4 Our view is that the 6 priority areas are as follows: -

- a) The Leadership Team needs to be strengthened.
- b) The executive senior management needs to have within its ranks commercial expertise.
- c) The Finance Service – it must be strengthened as a priority (recognising that some temporary strengthening has already taken place).
- d) The section 151 officer must report directly to the CEO.
- e) A central programme office – this resource needs to be put together urgently to track and progress the planned changes.
- f) The Council must immediately strengthen its oversight of Brick by Brick.

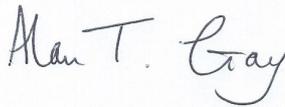
## 11 Conclusion

- 11.1 Croydon Council finds itself in a very difficult position. It is unable to balance its budget for this year, by some considerable distance. The Council as a whole and in particular its two major spending departments continue to display an inability to manage demand for services and the financial discipline to keep its delivery within budget. The situation has deteriorated to the extent that the Director of Finance has issued a Section 114 notice.
- 11.2 It is difficult to conclude other than the Council has been poorly led by both Members and Officers over recent years. There have been additional pressures of unaccompanied asylum seeking children and the added costs brought about in responding to the pandemic. Added to which the anticipated growth, through the Growth Zone has not been realised. Returns from more commercial investments have similarly not been realised in the way that was anticipated, although this appears to be as much to do with the poor forecasting and management of these initiatives as their performance. The signs of this crisis have been there for some time – the high spending departments have continued to overspend; savings targets have not been met.
- 11.3 The signs were there, and alarm should have been noted and escalated, but the Assurance process has failed, and Governance has been poor.
- 11.4 The leadership of the Council has changed, both in terms of elected members and the Executive. The Report in the Public Interest has finally brought about a realisation of the seriousness of the Council's position. The Director of Finance has issued a section 114 notice and there are external and internal reports recommending extensive changes to the Council which are being embraced and acted upon by the new leadership. It is however going to be a long haul to return the Council to healthy financial state.
- 11.5 We believe there is no credible alternative to the option of capitalisation, that will restore the Council to financial health. Because of the Council's track record and the continued uncertainty about the precise financial position, there continue to be risks and we cannot give full assurance that they will achieve a successful recovery. The Councillors and officers do appear to have understood and accepted the perilousness of their position and the need to take difficult and drastic decisions.
- 11.6 Therefore, we believe the Council needs to be the subject of continued monitoring and scrutiny. To this end we are recommending the Council should create an independent Board of non- executives, to advise and oversee their progress, reporting back to the MHCLG on a regular basis.

11.7 Whilst the Council is preparing its detailed single improvement plan, we believe there are a series of milestones, that the Council needs to adhere to if it is to manage an effective recovery. These are set out below. Should the Council fail significantly in meeting these milestones (particularly managing within its budget) then we believe the Secretary of State should consider a statutory intervention by of Commissioner(s).



**Chris Wood**  
Lead Reviewer



**Alan Gay OBE**  
Financial Reviewer



**Boris Adlam**  
Commercial Reviewer

## Appendix 1: Croydon Improvement Action Milestones

Month	Action	
November '20	<ul style="list-style-type: none"> <li>• Agreement to establish Independent Croydon Renewal Improvement Board (CRIB)</li> <li>• Appoint Board Members to BbB</li> <li>• Consider and agree the recommendations of the PWC review of companies</li> </ul>	All agreed at Cabinet 25/11
December	<ul style="list-style-type: none"> <li>• Response to RIPI considered by Scrutiny and Audit committees</li> <li>• Approve Stn 114 budget for 2020/21</li> </ul>	Scheduled for 2 & 8/12 Scheduled for 01/12
January '21	<ul style="list-style-type: none"> <li>• Draft 21/22 budget scrutinised by Finance Review Panel</li> <li>• Cabinet agrees full response to RIPI</li> <li>• Cabinet approves Croydon Renewal Improvement Plan (CRIP)</li> <li>• Appointment of DoF at BbB</li> <li>• Approve a proposal for the future use of the Croydon Park Hotel</li> </ul>	Scheduled for Cabinet 18/01
February	<ul style="list-style-type: none"> <li>• 2020/21 third quarter financial monitoring report to Cabinet</li> <li>• Central Programme Management Office established</li> <li>• Receive the 2<sup>nd</sup> phase report from PWC on the strategic review of companies and make decisions on the future operation of BbB</li> </ul>	
March	<ul style="list-style-type: none"> <li>• Council approval of 21/22 budget</li> <li>• In year savings of £X achieved (see Stn 114 budget)</li> <li>• First meeting of CRIB</li> <li>• Council restructure agreed</li> </ul>	Scheduled for 01/03
April	<ul style="list-style-type: none"> <li>• Review of finance/social care IT systems (ControCC/Liquid Logic) to validate effective usage</li> </ul>	
May	<ul style="list-style-type: none"> <li>• First Report from CRIB submitted to SoS</li> <li>• Draft outturn 2020/21 report to Cabinet</li> </ul>	
June	<ul style="list-style-type: none"> <li>• Corporate Finance Performance and Risk Reporting in place</li> <li>• Finalisation of 2020/21 outturn</li> </ul>	
July	<ul style="list-style-type: none"> <li>• 1st Qtr budget performance considered by IIB. Report back to SoS/MHCLG</li> </ul>	
August		
Sept		
October	<ul style="list-style-type: none"> <li>• Half year budget performance considered by Cabinet and CRIB. Report back to SoS/MHCLG</li> <li>• Half year progress on CRIP considered by CRIB. Report back to SoS/MHCLG</li> </ul>	

## London Borough of Croydon

Report in the Public Interest concerning the refurbishment of Fairfield Halls and related governance arrangements

# London Borough of Croydon

## Report in the Public Interest concerning the Council's refurbishment of the Fairfield Halls and related governance arrangements

### Executive Summary

#### Background

Grant Thornton are the external auditors to the London Borough of Croydon (the Council). We are issuing this Report in the Public Interest under section 24 and Schedule 7 of the Local Audit and Accountability Act 2014.

The Council owns Fairfield Halls, an arts, entertainment and conference centre in Croydon which originally opened in 1962. By 2010, the Council had identified a need to update and develop Fairfield Halls and place it on a more sustainable footing. By 2014 the Fairfield Halls became part of the development of a new Cultural Quarter. By 2016 the need to refurbish Fairfield Halls had become urgent and the venue closed in July 2016 for refurbishment, with a planned re-opening date of June 2018 and an initial Cabinet approved investment of £30 million for the refurbishment project (the project).

The project was delivered in September 2019 (over a year late) with a final cost of £67.5 million incurred up to that date (more than double the initial budget).

Our review leading to this report arose after we issued a report in the public interest on 23 October 2020 concerning the Council's financial position and related governance arrangements. The Council has reported considerable improvements since then and is continuing to respond to the matters in that report (as detailed below) and other areas of concern the Council has itself identified. One such matter related to the historical decision making and governance relating to the refurbishment of Fairfield Halls. The Council raised their concerns with us (Grant Thornton UK LLP), as the Council's external auditor, in late December 2020. We considered the concerns raised to represent a significant risk to the value for money conclusion and commenced an initial review in January 2021. Our initial findings required further investigation, the results of which are set out here.

Following the closure of Fairfield Halls during the pandemic in 2020, the Council sought to reopen Fairfield Halls [Although the refurbishment was awarded the RIBA London Award 2021, and the Highly Commended Civic Trust Award 2021] issues relating to the building were reported to the Council. Initial surveys commissioned by the Council indicate the need for additional expenditure to rectify the reported issues. The Council considers that the additional works should have been addressed during the refurbishment and this is disputed by Brick by Brick. The Council raised concerns on the historic governance of the project and, in discussion with current officers, we identified a significant risk to the value for money conclusion.

Our initial work in 2021 identified areas for further investigation, the results of which are set out here.

This report covers the Council's decision making and governance processes in the period from June 2016 - when the decision was made to bring forward a wider regeneration scheme - up to the reopening in September 2019, and references to the Council or to individuals in particular roles during that period should be read accordingly.

#### Legal arrangements

##### *Engaging Brick by Brick to refurbish Fairfield Halls*

In June 2016, the Cabinet approved a proposal to use Brick by Brick (Croydon) Limited (Brick by Brick), its wholly owned housing development company, to bring forward elements of the College Green scheme, which encompassed a house building scheme, public realm improvements and the regeneration of Fairfield Halls. The proposal involved the transfer of land interests (not including Fairfield Halls) to Brick by Brick in order for Brick by Brick to develop residential property on them and to carry out a refurbishment of Fairfield Halls "under licence", with the financing of the works to Fairfield Halls being an estimated £30 million. It was decided that Brick by Brick would be loaned money to fund part of the refurbishment by the Council, which Brick by Brick would need to repay but would be compensated for through the profits made from the sale of 2,000 houses (built by Brick Brick) on the College Green land transferred.

It is not uncommon to use a land transfer option for development of public land for residential housing: this route allows a public body to transfer land to a developer on terms which permit, but do not require, the developer to develop the land, with the public body instead being able to achieve its objectives by retaining a right to re-acquire the land should the development not occur. Such an arrangement may not, depending on how it is executed, engage rules around public procurement (broadly in place with a view to ensuring fair and equitable awarding of contracts, and securing value for money) because it may not involve the public body imposing enforceable obligations on the developer. This type of arrangement can be appropriate where houses are being built as there is less need for detailed specification and timing of delivery of housing, as compared to a public amenity which the public body requires to be built.

However, a decision to include the Fairfield Halls refurbishment in such a land transfer added complexity to the College Green scheme. The challenges and expertise needed to manage a complex refurbishment were very different to the challenges of managing a house building scheme and there was a lack of recognition in the Cabinet paper and minuted discussion of these differences, the risks and how these would be mitigated. While the June 2016 meeting did not explicitly use the land transfer option for Fairfield Halls, it has been suggested by the Council in contemporaneous submissions that this was the intention; this is supported by the fact that later the Council produced a draft conditional sale agreement which would (if properly executed) effect a land transfer in respect of Fairfield Halls.

Some months after the decision, in November 2016, the Council took legal advice which suggested that a land transfer arrangement as described above could work by selling the relevant land to Brick by Brick, with the Council providing lending to Brick by Brick secured with a charge over the land; prior to the land transfer, a licence would be required to enable Brick by Brick to carry out initial works, and such a licence was issued on 1 August 2016.

The legal advice showed that if the land transfer option was properly implemented, it was possible to avoid any public procurement process, although it highlighted risks. In our view these risks were significant. The key to avoiding a public procurement process, it was said was that there was no positive obligation on Brick by Brick to do the works (as the arrangement would rely on the Council's ability to take back the land if the refurbishment were not to occur), but conversely flagged that there was nonetheless a risk of challenge from other potential bidders if the Council set out a detailed specification of works which might amount to giving rise to enforceable legal obligations. It was explained that so doing might require a public procurement process; in the event, one was not carried out on the basis that there were no such enforceable obligations. The legal advice also flagged that Brick by Brick would need to act as an independent company on a commercial basis and avoid acting as if it were a department of the Council, in order for this land transfer option without a public procurement process to be workable and in line with public procurement and state aid law.

The licence issued by the Council to Brick by Brick on 1 August 2016 enabled, but did not require, Brick by Brick to carry out the refurbishment of Fairfield Halls in line with a detailed specification (the licence). The Council also made payments to Brick by Brick for the costs of the refurbishment and treated these payments as lending.

Neither the Council nor Brick by Brick have been able to provide a properly executed written conditional sale agreement (which would have been in place had Fairfield Halls been transferred to Brick by Brick in line with the land transfer option) or properly executed loan agreements covering the funds provided by the Council. Without properly executed written agreements key elements of the legal advice were not met. Further, it is our view that the Council's arrangement was at risk of challenge under procurement law as Brick by Brick was given a detailed specification of works (effectively amounting to a positive obligation to carry out the refurbishment) and the Council did not assess whether Brick by Brick was not acting as an independent company, in line with the legal advice.

In obtaining external legal advice and not fully considering or implementing that advice, it is our view that the Council failed to ensure it was acting lawfully. We have not been provided with evidence of senior statutory officers updating Cabinet formally on the legal risks emerging, considering how the emerging risks could be effectively mitigated or of the anticipated shortfall in funding (covered below) and the foreseeable implications.

In our view, it is likely that the licence did not reflect the underlying reality of the arrangements. Rather it is our view that the licence was (at least in part) intended to circumvent procurement law and competitive tendering, albeit in a way that was believed to be lawful; the licence provided that Brick by Brick was allowed, but not obliged, to carry out the works, but in our view the reality was Brick by Brick was committing itself to carrying out the refurbishment works which the Council wished to see carried out and was doing so in return for economic compensation which had been informally agreed albeit not recorded in binding properly executed contracts. As the Council was specifying the works it wished to see carried out, and the true objective of the licence was to oblige Brick by Brick to carry out those works, for the benefit of the Council, a public procurement process should have been carried out, and the entry into a licence without one did not reflect this underlying

reality and in our view is therefore likely to have been found to have been a breach of public procurement law had it been challenged in court.

Regardless of whether the arrangements were a breach of procurement law, the arrangements clearly did not allow the Council to protect its interests and secure economy, efficiency and effectiveness in its use of resources in relation to the project. In our view the eventual outcome was that the Council could not properly exercise control or oversight of the refurbishment, because Brick by Brick was not obliged to carry out the refurbishment to any particular specification and did not have assurance that it had engaged the most appropriate developer for the complex refurbishment in terms of capacity, costs or other factors (as it would have done had it carried out a public procurement process).

#### *Funding Brick by Brick to refurbish Fairfield Halls*

While it is our understanding that the project was intended to be cost neutral, the Council intended to fund the project in the short term through a loan drawdown agreement with Brick by Brick. The legal powers the Council intended to rely on would have required Brick by Brick to own the land on which it was carrying out the work, and the loans either to be secured by mortgages or subject to an agreement to oblige Brick by Brick to construct residential units on the land. While draft conditional agreement of sale and draft loan agreements are available, neither the Council nor Brick by Brick can provide properly executed written versions of these documents.

There therefore appears to be no clear contractual basis at all for the project (and we note that while it is technically possible for unsigned written contracts to give rise to enforceable legal obligations, where the parties are acting in accordance with their terms, this will not always be the case, so even in a best case scenario, with absent properly executed written contracts the Council was subject to a material risk that in the event of an action to enforce the loans, a court could find that there was no enforceable contract).

We therefore do not consider that the Council properly exercised its powers to make payments to Brick by Brick. This is a serious concern as to the Council's financial and corporate management and also calls into question the lawfulness of the Fairfield Halls payments and suggests that the Council has not made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. Without properly executed written contracts, there was a material risk that the Council did not have any right (save perhaps under the law of restitution) to obtain reimbursement of the monies paid or to control its use (appreciating that, had the Council been able to control the expenditure, its approach to the application of the public procurement and state aid rules would have differed).

#### *State aid*

Without properly executed written contracts for the loan payments, and in light of the circumstances, the payments to Brick by Brick also give rise to a significant state aid risk (state aid being where the public sector gives aid which distorts cross border competition). The legal advice to the Council flagged the risk of unlawful state aid, and it is not clear that this risk was appropriately considered or managed as current officers responding on behalf of the Council have been unable to provide this consideration by their predecessors.

#### *Challenge from another local authority*

As part of the project the Council sought to apply for grant funding from the Local Enterprise Partnership, Coast to Capital, where the accountable body was another local authority. Correspondence seen indicates the other local authority raised serious concerns on how the arrangement complied with procurement rules with the Council's then senior statutory officers and the then Executive Director of Place. We do not consider that these officers properly reflected on the challenge presented by peers from another local authority and considered whether the Council's approach was reasonable.

#### *Other legal considerations – record keeping*

The absence of records documenting the rationale for decisions in relation to a significant project is a failure to keep the records required and creates legal uncertainty and risk. Throughout the project there are elements where record keeping has been insufficient:

- Documentation setting out the implementation of decisions delegated to officers was not systematically retained or stored to allow retrieval
- Financial analysis supporting decisions taken by the Cabinet is not available

The lack of formal consideration of the external legal advice, the lack of completed legal land transfer documentation and the lack of properly executed written legal arrangements covering the provision of funding to Brick by Brick is in our view a very serious matter and demonstrates fundamental failings by the Council.

## Governance

We have already raised significant concerns over the governance culture and reporting mechanisms between the Council and Brick by Brick (in the Public Interest Report published on 23 October 2020) and the PwC review of companies dated 13 November 2020 also raised concerns. The issues in respect of the oversight of the Fairfield Halls Refurbishment reflect many of these concerns.

### *Governance arrangements for Brick by Brick*

The Cabinet paper approving the establishment of Brick by Brick in March 2015, delegated governance arrangements to the then Executive Director of Place (with the holder of that post in March 2012 later becoming the Chief Executive in 2016) in consultation with the then Portfolio Holder for Homes and Gateway Services, the then Section 151 Officer and the then Monitoring Officer. The June 2016 Cabinet paper sets out the governance arrangements in place between the Council and Brick by Brick including presenting the Brick by Brick Business Plan to Cabinet and the appointment of Council nominated Board members and observers. The Brick by Brick Business Plan has been presented each February since 2017. However, there was no formal documented mechanism through which Council nominated Board members or observers reported back to the Council and therefore it is unclear how the Council sought to exercise governance over Brick by Brick through the nominated Board members or observers.

In October 2018 the then Section 151 Officer provided the then Chief Executive with proposed improved governance arrangements for Brick by Brick. A draft terms of reference for a Brick by Brick monitoring group was proposed at the first meeting in April 2019 with final terms of reference being agreed at the September 2019 meeting some four years after the original decision to establish Brick by Brick. This timeline demonstrates a lack of urgency to implement appropriate governance arrangements over Brick by Brick which was in our view ultimately the responsibility of the then Chief Executive as Head of Paid Service with responsibility for establishing proper arrangements.

### *Governance arrangements for the Fairfield Halls refurbishment project*

Initially project oversight was through the Council's Growth Board from 2015 when this was a Council run project. After the project was transferred to Brick by Brick in June 2016 reporting continued to the Growth Board until May 2017. In May 2017, the Fairfield Programme Board (the Board) was set up to provide oversight of the project. In structure, the terms of reference should have been sufficient to manage the project with an escalation route to the Growth Board which itself had escalation to the Corporate Leadership Team or other Council process as it 'sees fit'.

From a wider Council perspective, the governance of the project was not in our view effective (as demonstrated by financial position of the project, set out below) as the only formal reporting to Members was through the Brick by Brick Business Plan which only included high level details on the project, there were no documented mechanism for Council appointees/observers to report back and the Member steering group was not set up until after the Fairfield Halls reopened.

The Scrutiny and Overview Committee (the Committee) was active in attempting to scrutinize the project, its progress and related costs. Reports presented to the Committee, in our view, did not highlight the known increase in costs.

### **Financial position of the project**

The June 2016 Cabinet decision referred to a £30 million investment in the project; we have found that the final expenditure on the project was £67.5 million. Despite the June 2016 Cabinet report referring to a financial appraisal, the Council has been unable to provide any such financial appraisal without which we are unable to conclude whether the project additional spend in excess of the budget was caused by inadequacies in the original budget setting or in controlling costs or in changes in the scope of the work during the project. With no subsequent Cabinet decision recorded on the project budget we consider the original Cabinet-approved budget to be £30 million. During the project there were variations agreed (although not at Cabinet level), which is not unusual for a complex capital project. The variations and expected additional expenditure were reported through the Fairfield Programme Board and the project additional spend was reported to the Growth Board. We have not been able to identify explicit formal reporting to the Cabinet of the project additional spend. Allowing the project costs to more than double from the original budget without explicit formal reporting to the Cabinet represents a fundamental failing by the Council.

[The idea that variations to the project were agreed by the Council also adds to the likelihood that Brick by Brick was obliged to carry out the project, at odds with the Council's approach to the application of the public procurement rules.]

In the absence of the original financial appraisal our understanding is that the project was intended to be cost-neutral to the Council with Brick by Brick using expected profits from the College Green scheme to cover the costs of the project. Under section 123 of the Local Government Act 1972 the Council has a duty to achieve best value in land disposals. We have not

been able to obtain the Council's assessment of whether £30 million for the land provided to the College Green projects represent best value and therefore we cannot conclude on whether the Council achieved this duty.

The Council funding (itself borrowed from the Public Works Loans Board) provided to Brick by Brick was intended to be loan funding, repayable to the Council. The Council did not charge Minimum Revenue Provision (MRP) on this borrowing as Brick by Brick was charged a higher interest rate than the Council was paying for the borrowing with the difference being intended to offset the statutory MRP charge. As there are no properly executed written loan agreements it is not definitive that the Council would have been able to enforce any right to recover the loan or its related interest and there is no off set for the MRP charge.

Regardless, the Council has written off the loans receivable of £61.3 million and the accrued interest of £9.1 million (noting that in the group accounts the entries would be subject to consolidated processes) and will need to charge MRP, which we estimate to be an average of £1.5 million per annum adding to the financial pressures already faced by the Council.

### **Council action since September 2019**

Fairfield Halls reopened in September 2019 and was closed during the pandemic in 2020. As the Council sought to reopen Fairfield Halls issues relating to the building were reported. Initial surveys commissioned by the Council indicate there is a need to spend further public monies to rectify the issues identified. The Council considers that the additional works needed should have been addressed during the refurbishment and this is disputed by Brick by Brick. A properly executed written agreement obliging Brick by Brick to carry out the work would have clarified responsibilities in this dispute and the absence of such a properly executed written agreement (as noted above) makes a resolution more challenging. The Council is left with the need to spend further public monies on the Fairfield Halls.

The Council has responded to the previous reports (in the public interest published on 23 October 2020 and the PwC review of companies dated 13 November 2020) including reporting to Cabinet in November 2020, February, July and November 2021 on the actions taken to address governance concerns relating to Brick by Brick and other Council companies. The latest report to Full Council on 13 December 2021, the Council reported that it had implemented 62 of the 99 actions planned in response to the first report in the public interest. The actions taken by the Council includes addressing the governance arrangements in relation to Brick by Brick and the processes for loan agreements. The commentary in this report reflects the arrangements that were in place up to September 2019. There has however been significant turnover in the Council's senior officers and Portfolio Holders since the period this report covers.

In reaching our view on the legality of the arrangement we discussed with and challenged the current Senior Statutory Officers who reviewed the position.

The Council has, in light of the matters reported upon here and their views as set out in this report, decided to account for the expenditure on the project as if it had been direct capital expenditure and has proposed amendments to the draft 2019/20 financial statements which in their view correct the accounting for this arrangement. We understand that the Council is now also in the process of considering future options for Brick by Brick, while in the meantime making other changes to the related governance arrangements.

### **Conclusion**

The Fairfield Halls refurbishment project was a complex project which was delivered late and with significant additional spend beyond the amount approved by Members; the entirety of the project spend has now been accounted for as capital expenditure. The Council's historical arrangements failed to ensure the legality of the arrangements for the project and allowed governance gaps which prevented monitoring of the project, oversight, and wider scrutiny and challenge that may have allowed corrective action to have been taken. Throughout the project there were individuals with both the knowledge of the many issues with the project and who had duties and responsibilities which we would expect to require action to address the known issues. The lack of appropriate action, in our view, represents a failure to discharge the duties expected from a small group of senior officers (the then three Senior Statutory Officers and the then Executive Director of Place). This group reported to the then Portfolio Holders (the then Portfolio Holders for Homes and Gateway Services, for Finance and Resources and the Leader) who were either not briefed by officers and should have requested briefings on the project given what they appeared to know or did not take effective action in response to concerns raised by the officers.

## Recommendations

This report makes a number of recommendations for the Council to address, with the statutory recommendations highlighted in bold.

- R1 The Chief Executive supported by the Monitoring Officer and the Section 151 Officer should ensure that Cabinet papers for major projects set out clearly**
- R1.1 the legal powers to enter into a particular arrangement and attendant risk**
  - R1.2 how the Council can protect its interests and secure economy, efficiency and effectiveness.**
- R2 The Monitoring Officer should ensure that**
- R2.1 contracts are properly executed before entering into arrangements with third parties**
  - R2.2 the properly executed documents are stored robustly to allow future scrutiny.**
  - R2.3 key requirements underpinning the legal advice are in place before progressing with the arrangement**
- R3 The Monitoring Officer should ensure that where legal advice changes after a Cabinet decision that the consideration of the implications of the changes is documented and where the Monitoring Officer considers additional legal risks are identified that the Cabinet is updated on the impact on the original decision made.**
- R4 The Section 151 Officer should ensure that prior to making payments to third parties that appropriate legal documentation is in place such as a properly executed contract or a properly executed loan agreement**
- R5 The Monitoring Officer and Section 151 Officer should ensure that arrangements are in place to properly consider public procurement rules and UK obligations on subsidy control rules before entering into arrangements.
- R6 The Chief Executive, Monitoring Officer and Section 151 Officer need to consider how to respond appropriately to challenge on decisions and be prepared to take corrective action where necessary.
- R7 The Chief Executive should improve record keeping arrangements so that**
- R7.1 the records supporting key decisions including financial analysis are maintained**
  - R7.2 a standard approach to record keeping with monitoring of which decisions have been implemented**
  - R7.2 tolerances are established for reporting back changes to Cabinet**
- R8 The Chief Executive, as Head of Paid Service, should ensure appropriate governance arrangements are implemented in a timely manner particularly for strategic developments such as Brick by Brick including where appropriate that there is clear guidance for nominated representatives on the expectations of the role including reporting back to the Council
- R9 The Chief Executive should work with the Leader to continue to embed**
- R9.1 a clearly understood distinction between the different roles and responsibilities of Members, officers and representatives of entities akin to Brick by Brick.**
  - R9.2 clear responsibilities for officers and Portfolio Holders in challenging reports presented to Cabinet and other committees for balance, accuracy and consistency in terms of knowledge**
- R10 The Chief Executive should review the terms of reference for officer and member/officer boards that oversee significant projects and capital/revenue expenditure and clarify the escalation routes for significant additional expenditure in excess of the budget
- R11 The Section 151 Officer should ensure financial reporting on significant capital projects is enhanced so that**
- R11.1 a clear agreed budget for the project is identified and the underlying financial analysis is maintained**
  - R11.2 a clear agreed project expenditure amount can be reported through appropriate governance processes**
  - R11.3 where there are changes in the original financial assumptions that there is an assessment on the project's financial viability with appropriate reporting**
  - R11.4 the revenue impact of any changes in the capital project are addressed in future budget setting**
- R12 The Chief Executive should put in place arrangements to consider inherent conflicts of interest for executive officers.

## Full Report

### Introduction

Grant Thornton are the external auditors to the London Borough of Croydon (the Council). We are issuing this Report in the Public Interest under section 24 and Schedule 7 of the Local Audit and Accountability Act 2014.

We issued a report in the public interest on 23 October 2020 concerning the Council's financial position and related governance arrangements. The Council has continued to respond to the matters in that report (and the PwC review of companies dated 13 November 2020). The Council has reported progress in implementing agreed actions to Cabinet in November 2020, February, July and November 2021. The December 2021 report to Full Council set out that the Council has implemented 62 of the 99 actions planned. The actions taken by the Council includes addressing the governance arrangements in relation to Brick by Brick and the processes for loan agreements.

Fairfield Halls closed in 2020 during the pandemic, when the Council sought to reopen Fairfield Halls issues related to the building were reported. Initial surveys commissioned by the Council indicate there is a need to spend further public monies to rectify the issues identified as well as matters related to the historical decision making and governance relating to the refurbishment of Fairfield Halls. The Council discussed their concerns with Grant Thornton, as the Council's external auditor, in late December 2020. We considered the matters raised represented a significant risk to the value for money conclusion and commenced an initial review in January 2021. Our initial findings required further investigation, the results of which are set out here.

### Background and chronology

The Council owns Fairfield Halls, an arts, entertainment and conference centre in Croydon which originally opened in 1962. In March 2013 the Council adopted the Fair Field masterplan as interim planning guidance with the aim of creating a phased long term framework for delivering the transformation of the area to be:

'Croydon's cultural and learning centre; an innovative and inspiring area with a lively and sustainable mix of residential, cultural, educational, commercial uses and a well-connected and high quality public realm.'

The masterplan included improvements to the setting of the Fairfield Halls and its immediate environment and referred to a £27 million refurbishment to be done by 2016. Initial preparatory work on the design was undertaken by the Council including an asbestos survey. In September 2014, the Council's Cabinet approved the development of a Cultural Quarter, including the integrated College Green which encompassed a house building scheme, public realm improvements and the regeneration of Fairfield Hall which by then had a projected capital budget of £33.75 million.

In January 2015, the officer led Growth Board was set up to oversee the monitoring and delivery of capital projects linked to regeneration which at that time included the Fairfield Hall refurbishment. The Council ran a competitive process and appointed a contractor to undertake the Fairfield scheme development and design which included the development and design of, but not physical construction and completion of, the Fairfield Halls refurbishment.

The need to refurbish the Fairfield Halls became urgent and in June 2016, the Council approved a proposal for the Council's wholly owned company, Brick by Brick (Croydon) Limited, to bring forward elements of the integrated College Green scheme which included:

'a £30 million package of improvement works to Fairfield Halls, a c200,000sqft new college/university building and approximately 2,000 new residential units alongside new public realm, retail and leisure space'.

The proposals involved a transfer of land interests (not including Fairfield Halls) to Brick by Brick for development as residential property, with Brick by Brick to complete the £30 million package of improvement works to Fairfield Halls under a licence. In Brick by Brick's view, the exact costs were intended to be confirmed at a later stage however this was not documented in the Cabinet paper and there were no further documented Cabinet decisions on the approval of the budget for the refurbishment of Fairfield Halls. We therefore consider the Council's properly approved budget to have been set at £30 million.

In July 2016, the venue closed for refurbishment with an original completion date of June 2018. The decision to close and deliver the refurbishment quickly rather than a phased closure over a longer time period was subject to political debate. A licence was issued on 1 August 2016, enabling Brick by Brick to enter the property in order to carry out the works. This arrangement amounted to commissioning by the Council was not subject to a public procurement process. We do not consider that this structure, analysed below under 'Legal arrangements', was satisfactory.

By May 2017, issues had emerged that presented a risk to the successful delivery of the project for example the discovery of additional asbestos and Croydon College no longer being in a position to sell a portion of land to the Council. The reduction in land impacted the number of residential units Brick by Brick had planned which impacted the financial viability of the wider College Green scheme.

Brick by Brick commissioned the main works contractor for the refurbishment with works commencing in September 2017. This commissioning was also not subject to a public procurement process, as Brick by Brick was not deemed to be subject to the public procurement rules.

From 1993, a charity had operated the venue with a grant from the Council. In July 2016, the charity went into administration and the Council needed to secure a new operator. A separate exercise was undertaken by the Council, as a public procurement, and a new operator for the Fairfield Halls was appointed in June 2017. By November 2017 the new operator expressed concerns about the delays would impact on the operator's ability to deliver its services and generate the necessary commercial revenues previously agreed with the Council. In addition, the operator had a number of requirements that needed to be factored into the refurbishment. The delays impacted the operator with the Council making a payment of £1.7 million to the operator in respect of the delays.

By the end of 2017 the project had run into a number of major problems that changed the risk profile of the project. The original engineering consultant appointed by the Council left the project and was in dispute with Brick by Brick, Croydon College were no longer part of the scheme with a significant impact on the housebuilding element of the wider College Green scheme (which had initially factored in a purchase of land from Croydon College which would be used to build residential property for sale, being one of the key sources of projected profit for Brick by Brick), costs were escalating due to additional changes in the work required and a new engineering consultant had to be procured. At this point delivery of the project was delayed to November 2018.

Letters between Brick by Brick and the Council in October 2018 outlined that the College Green expenditure projections exceeded income by £28.8 million with the Fairfield Halls expenditure figure being £51.6 million and a revised deadline of June 2019 was agreed. This deadline was again revised to September 2019 which was met after further additional costs were incurred to accelerate the works. We do not consider that these increases in costs were appropriately escalated or approved within the Council, and this is covered in the 'Financial governance' section below.

The venue re-opened in September 2019 and was closed during the pandemic in 2020. Although the refurbishment was awarded the RIBA London Award 2021, and the Highly Commended Civic Trust Award 2021,] as the Council sought to reopen Fairfield Halls later in 2020, issues relating to the building were reported. Initial surveys commissioned by the Council indicate there is a need to spend further public monies to rectify the issues identified. The Council considers that the additional works needed should have been addressed during the refurbishment and this is disputed by Brick by Brick,

### **Background context**

The matters within this report in the public interest date back a number of years and key people are no longer in role at the Council and have therefore not been able to access their files from the time. We have relied on records the Council has retained but recognize the limitations in this.

During the project's time frame there were a number of significant matters that the Council was responding to including the September 2017 report from Ofsted assessing children's services as inadequate, other complex programmes and the wider financial pressures experienced by the Council (covered in the Public Interest Report published on 23 October 2020). The Chief Executive also had a lead operational role in relation to the response to the tram crash in November 2016. The Council had been under considerable pressure.

For full disclosure we set out Grant Thornton's position. Grant Thornton was the external auditor of the Council over the period of the matters in this report and conducts the audit under the Local Audit and Accountability Act 2014. The matters of concern identified in this report developed over the years and the exact picture only became clear once the matter was identified as a significant risk to the value for money conclusion and work was undertaken to address that risk.

Where a local authority has a group structure the consideration of value for money would include the local authority's governance arrangements over its group structure. Grant Thornton was also the external auditor of Brick by Brick (part of the Council's group structure) until 31 March 2019 with the audit conducted entirely separately and by different personnel under the Companies Act regime. It is common practice that audit firms working in the public sector have commercial clients and for the parent and subsidiary auditors to be from the same audit firm. As the group auditor, the Grant Thornton team acting as auditor under the Local Audit and Accountability Act 2014 had access to the audit working papers of the Grant Thornton team acting as Companies Act Brick by Brick auditor for the limited purpose of the consolidation of the group accounts. Audits under the Companies Act are carried out to a different standard than audits under the Local Audit and Accountability Act 2014 in particular the value for money consideration is not a requirement of an audit under the Companies Act. That regime does not call for the same approach as for a public sector audit. [Brick by Brick's auditors would not be expected to pick up or give rise to the concerns raised in this report given the different approach of a Companies Act audit and the particular circumstances including that the parent was the company's sole funder and that the Council had given third party acknowledgement of the loans such that their auditors would not expect to call for the executed documentation.]

Finally, by way of introductory comment, we note that in this report, references to 'officers' are to the Council's staff, while members or Portfolio Holders refer to elected members (Councillors).

## Legal arrangement

### Legal arrangements – engaging Brick by Brick to refurbish Fairfield Halls

First, we consider the legal arrangements for the refurbishment of Fairfield Halls.

It is incumbent upon local authorities, including the Council, to have arrangements to secure value for money. They are in addition subject to the Public Contract Regulations 2015, which govern public sector procurement in England & Wales. Broadly, the effect of these regulations is that when awarding a relevant contract that is subject to the regulations (i.e. one which is over certain financial thresholds), the local authorities are required to advertise that contract (previously on the Official Journal of the European Union, and now on the UK's new Find a Tender Service) and then to follow certain, specific procedures for choosing to whom to award the contract, broadly with a view to ensuring fair and equitable awarding of contracts, and securing value for money. The nature and granularity of the specific procedures depends on the subject matter and value of the contract, with the default for relevant contracts being that a competitive tender process must be carried out, unless an exemption applies which enables an authority to use another route. We refer to a process that is subject to the regulations as a 'public procurement process'.

In June 2016, the Cabinet approved the proposal to use Brick by Brick to bring forward elements of the College Green scheme including the refurbishment of Fairfield Halls. The proposal involved the transfer of land interests (not including Fairfield Halls) to Brick by Brick in order for Brick by Brick to develop residential property on them, and to carry out a refurbishment of Fairfield Halls "under licence", with the financing of the works to Fairfield Halls being an estimated £30 million. The proposal intended that Brick by Brick would be loaned money to fund part of the refurbishment by the Council, which it would need to repay, but would be compensated for the refurbishment through the profits made from the sale of 2,000 houses (built by Brick by Brick) on the College Green land transferred.

The Council's records show that it was thought that this structure would allow the Council to dispose of the College Green land in return for housebuilding and to bring forward the refurbishment of Fairfield Halls, without a public procurement process. It is not unprecedented to use a land transfer arrangement such as this and in November 2016, four months after the original decision, the Council took legal advice which suggested that this type of land transfer arrangement could work (and be lawful) as follows:

- The Council would sell relevant land to Brick by Brick;
- The Council would be able to avoid *any* public procurement process by avoiding imposing enforceable obligations on Brick by Brick to develop the land into residential property or to refurbish Fairfield Halls (instead retaining control through an ability to take back the land if the work was not carried out). Further control could be exercised by securing lending from the Council to Brick by Brick with a charge over the land. The lack of an enforceable obligation was key to avoiding requirements to carry out a public procurement.
- There was a risk that other potential bidders or others might challenge the arrangement, arguing that there was in fact a legally enforceable obligation on Brick by Brick to carry out the development or the refurbishment, which would mean that a public procurement process should have been carried out. This was said to be a particular risk if the Council set out a detailed specification of works or otherwise exercised management control of the works.

- Further, Brick by Brick would need to avoid acting as if a department of the Council, and should act independently and on a commercial basis (because, referring implicitly to earlier legal advice given on the establishment of Brick by Brick, it followed if Brick by Brick were acting as if a department of the Council, it might *itself* need to carry out a public procurement process when engaging sub-contractors for work including the project).

We refer to this as the “land transfer option”.

It is not uncommon to use a land transfer option for development of public land for residential housing: this route allows a public body to transfer land to a developer on terms which permit, but do not require, the developer to develop the land, with the public body instead being able to achieve its objectives by retaining a right to re-acquire the land should the development not occur. Such an arrangement may not, depending on how it is executed, engage rules around public procurement, because it may not involve the public body imposing enforceable obligations on the developer. This type of arrangement can be appropriate where houses are being built as there is less need for detailed specification and timing of delivery of the houses, as compared to a public amenity which the public body requires to be built. However, a decision to include the Fairfield Halls refurbishment would add complexity to the College Green scheme.

Although the June 2016 meeting did not in our view decide explicitly to use the land transfer option for Fairfield Halls, it has been suggested by the Council and then officers in contemporaneous submissions that this was the intention; this is supported by the fact that later, the Council produced a draft conditional sale agreement, which would (if properly executed) effect the land transfer, although neither the Council nor Brick by Brick have been able to provide a properly executed written copy of it, and the land was not transferred. If it was the Council’s intention to use the land transfer option for Fairfield Halls, there was a lack of recognition that the challenges and expertise needed to manage the complex refurbishment were very different to the challenges of managing a house building scheme. The downside risks of adding a complex refurbishment to a housebuilding scheme were not appropriately assessed.

As set out in the legal advice taken by the Council, the land transfer option did not permit, if it was to avoid the need for public procurement, the Council to obligate the developer (Brick by Brick) to deliver a defined specification of works. Without a defined specification of works, the Council could not insist that the intended improvements and developments were completed or require them to be completed to a particular standard. In our view the restrictions of the land transfer option were unsuitable for a complex refurbishment of this nature.

Further, it is as noted above unclear whether the Council intended to use the land transfer option to enable Brick by Brick to carry out the development of Fairfield Halls, as well as the wider development. While the June 2016 Cabinet minutes refer to a wider land transfer for the College Green development, the Fairfield Halls venue was not included in that land transfer but was instead referred to as to be developed by Brick by Brick “under licence” in the Cabinet Report considered at that meeting (although as noted above the Council did later prepare sale documentation).

In line with this, the Council issued a Licence for Access to Carry out Works (the licence) for the project, dated 1 August 2016. While this licence does not reflect the land transfer option discussed in the legal advice, it does reflect a preliminary step outlined in the legal advice (to enable initial works ahead of a land transfer). This appears to be the licence referred to in the June 2016 Cabinet Report.

The licence permits Brick by Brick to enter Fairfield Halls to carry the works set out in a detailed specification in the accompanying schedules and includes a clause that allows the works to be extended beyond the schedule where this is agreed between both parties; the licence does expressly not oblige Brick by Brick to carry out the project and did not cover the funding arrangements for the project. We recognize therefore that there is again an argument that this approach does not engage the public procurement rules, because it does not impose enforceable obligations on Brick by Brick (which could trigger a public procurement process). Our view however is that taken in the round, this did not reflect the underlying reality, as set out below.

As a result of the use of the licence:

- The Council was not properly able to exercise control or oversight over the refurbishment as it would have been had this been under a service contract.
- The arrangement was at risk of challenge because Brick by Brick was given a detailed specification of works, which the legal advice had suggested might make the land transfer option subject to challenge (because it might be viewed in the round as giving rise to an enforceable obligation which would then have made the arrangement subject to a public procurement process).

- The Council did not have assurance that it had engaged the most appropriate developer in terms of capability, costs or other factors, which it would have had, had it conducted a public procurement process.

We refer to the licence arrangement that was pursued instead of the land transfer option as the “**development licence option**”.

The November 2016 legal advice had also ruled out other methods of compliance with procurement law noting that:

- Brick by Brick was a commercial company that did not qualify for the “Teckal’ exemption, that may have allowed works to be legally awarded to a company which is essentially a Council entity without a public procurement process, where it is treated as equivalent to an internal arrangement.
- There were no unique technical characteristics that would prevent other developers doing the work (which would again mean that no public procurement process was required).

The November 2016 legal advice had also flagged, as above, that Brick by Brick would need to avoid acting as if a department of the Council, and should act on a commercial basis – that is, as an independent third party (because, if Brick by Brick were acting as a department of the Council, it might itself need to carry out a public procurement process when engaging sub-contractors for the refurbishment). In considering whether Brick by Brick was acting as an independent third party we consider that, appreciating that Brick by Brick has significant discretion as a commercial company, the following factors should have challenged the Council’s view of Brick by Brick’s independence in line with the legal advice obtained:

- An independent company would be very unlikely to enter into an arrangement to deliver a complex refurbishment project without the protection of properly executed written contract to ensure the company received payment for the work undertaken, and to manage the relationship between it and the commissioning body (for example in relation to disputes)
- The Council would be very unlikely to provide significant funding to an independent company without a legal arrangement being in place to safeguard public monies

Brick by Brick is of the view that there was contextual assurance that it would be paid based on the discussions, verbal assurances and intent of the Council through the draft agreements and the fact the Council processed and paid contractor and consultant invoices through the financial management arrangement with Brick by Brick. In addition Brick by Brick is of the view that as the Council is ‘its one hundred percent shareholder... the ultimate implications of any detriment to Brick by Brick arising from there being no signed contract with the Council would fall upon the Council’. Brick by Brick’s views show how it satisfied itself of its responsibilities. However the Council’s legal advice was that for the proposed land transfer arrangement to be lawful the Council needed to ensure Brick by Brick acted as an independent company and we remain of the view that the independence of Brick by Brick is open to challenge from the Council’s perspective, as there were no properly executed written contract or loan documents and therefore the Council has not ensured that its own legal advice was followed, or that it could secure value for money.

In obtaining external legal advice and not acting on that advice, it is our view that the Council failed to ensure it was acting lawfully. We can find no evidence of senior statutory officers updating Cabinet formally on the legal risks emerging, consideration of how the emerging risks could be effectively mitigated or of the anticipated shortfall in funding and the foreseeable implications.

In our view, it is likely that the licence did not reflect the underlying reality of the arrangements. Rather, it is our view that the arrangements were (at least in part) intended to circumvent procurement law and competitive tendering, albeit in a way that was believed to be lawful; the licence provided that Brick by Brick was allowed, but not obliged, to carry out the works, but in our view the reality was that Brick by Brick was committing itself to carrying out the refurbishment works which the Council wished to see carried out and was doing so in return for economic compensation which had been informally agreed albeit not recorded in binding contracts, so a licence which purported not to place enforceable obligations on Brick by Brick to carry out the refurbishment did not reflect this reality. As the Council was specifying the works it wished to see carried out, and the true objective of the licence was to oblige Brick by Brick to carry out those works, for the benefit of the Council, a public procurement process should have been carried out, and the entry into the licence without one would in our view be likely to have been found to have been a breach of public procurement law had it been challenged in court..

(While the land transfer option was not in the end pursued for Fairfield Halls, we note that the mere entry into the draft conditional sale agreement, which would have effected the land transfer option, would not necessarily have meant that there was no breach of public procurement law; the Council’s legal advice in November 2016 highlighted (as set out above) that with the land transfer option there would be a risk that other potential bidders or others might challenge the arrangement,

arguing that there was in fact a legally enforceable obligation on Brick by Brick to carry out the development, which would mean that a public procurement process should have been carried out.)

Further, regardless of whether the arrangements were a breach of procurement law, the arrangements clearly did not allow the Council to protect its interests and secure economy, efficiency and effectiveness in its use of resources in relation to the project: even if it had been clearly in compliance with public procurement law, the licence arrangement meant that the Council did not have control over the budget (see further below), specification or delivery of the project, as would have been appropriate for a project of this nature.

While Brick by Brick did itself carry out a competitive procurement process when appointing its own contractors, this was not one in compliance with the Public Contracts Regulations: the issue of whether Brick by Brick itself should have carried out a *public* procurement process when engaging contractors is outside the scope of this public interest report.

### **Legal arrangements – funding Brick by Brick to refurbish Fairfield Halls**

We have also considered the basis on which the Council funded the project (which was not covered in the licence).

#### *Power to lend*

The Council intended to fund the project in the short term through a loan drawdown agreement with Brick by Brick. The Council has relied on two powers to make the payments to Brick by Brick: Section 3 of the Local Authorities (Land) Act 1963; and Section 24 of the Local Government Act 1988. We do not consider either to have been available to the Council in the circumstances.

For the Council to advance a loan to Brick by Brick in accordance with section 3 of the Local Authorities (Land) Act 1963 for Brick by Brick to develop land, Brick by Brick would need to own the land on which it was carrying out the work, and the loans would need to be secured by mortgages. Individuals involved at that time assert that there were legally executed documents. However, while drafts of each of a Conditional Agreement of Sale and loan agreement have been provided, and this power may have been relevant had these been properly executed, neither the Council nor Brick by Brick have been able to provide properly executed written contracts. We do not therefore consider that the Council properly exercised this power to make payments to Brick by Brick.

For the Council to advance a loan to Brick by Brick in accordance with section 24 of the Local Government Act 1988 the Council would need to have had agreements in place which legally obliged Brick by Brick to construct residential units as part of the arrangement. Whilst this intention is clear as part of the wider College Green scheme, again, without properly executed written legal documentation there is no evidence that monies lent for the Fairfield Halls refurbishment were lent for the purpose of constructing residential property, and so no evidence that this power was available to the Council in respect of Fairfield Halls. We do not therefore consider that the Council was able to rely on this power to make payments to Brick by Brick.

Setting aside the legal powers which could have been deployed to fund the project, there appears to be no definitive contractual basis at all for the payments, since no properly executed written relevant loan agreements have been found. While it is possible for unsigned contracts to give rise to enforceable legal obligations, where the parties act in accordance with their terms, this will not always be the case, meaning that at best the Council was subject to a material risk that in the event of an action to enforce the loans, a court would find that there were no enforceable obligations. It therefore appears that very substantial amounts of money have been expended by the Council without any formal written basis at all, and without the Council having any right to exercise control and oversight over the use of those monies or (save perhaps under the law of restitution) to obtain reimbursement of those monies, unless a court were to find that, notwithstanding the lack of proper execution, the draft loan agreements had given rise to enforceable obligations. Representations from the then section 151 officer state that the terms of lending and interest rates were agreed at the time. While the then Leader and then Portfolio Holder for Finance and Resources have contended that there were appropriate protections and financial controls in place at all times for the funds, without properly executed written loan agreements the Council's legal position is at best open to challenge.

Even if the Council had had the statutory powers to make the payments, there appear to be no formal documents in which the Council has clearly taken a decision to make the Fairfield Halls payments and recorded its reasons and legal basis for its decision. This is a serious concern as to the Council's financial and corporate management and also calls into question the lawfulness of the Fairfield Halls payments and suggests that the Council has not made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

### *State aid*

The payments to Brick by Brick which should have been pursuant to loan agreements which were not completed also give rise to a significant state aid risk (state aid being where the public sector gives aid which distorts cross border competition, now replaced in UK law by the new subsidy control regime).

We note that the land transfer option also engaged a risk of being unlawful state aid, as flagged in the legal advice taken by the Council, and it is not clear that this risk was appropriately considered or managed.

It was reasonable to expect the senior statutory officers of the Council to have documented their consideration of how to fund a shortfall in funding for the Fairfield Halls project (flagged in the November 2016 advice as a particular state aid risk) and how to ensure compliance with state aid rules. Current officers have been unable to provide this consideration by their predecessors.

### *Challenge from another local authority*

As part of the project the Council sought to apply for grant funding from the Local Enterprise Partnership, Coast to Capital, where the accountable body was another local authority. We have seen correspondence dated March 2018 between officers of that local authority and the Council's then Monitoring Officer, then Chief Executive and then Section 151 Officer where the legal basis of the arrangement was challenged. Despite assurances from the Council's then Monitoring Officer that they were confident in the Council's approach, the conclusion from the other local authority was:

'The Accountable Body is therefore unable at this time to provide Coast to Capital with the assurance in relation to the scheme. Passing monies to an arm's length third party in the absence of a written contract and/or a compliant procurement process is inconsistent with Coast to Capital's Assurance Framework and the national assurance framework.'

The correspondence references discussions with the Council's then Chief Executive before agreeing a meeting with the Accountable Body involving the Council's then Section 151 Officer, the then Executive Director of Place and a representative of the then Monitoring Officer.

The serious concerns expressed by another local authority reflect our concerns regarding the legal powers being used, how the arrangement was compliant with procurement regulations and the absence of a properly executed written contract. From the correspondence we have seen it is clear that the then senior statutory officers and the then Executive Director of Place were aware of the other local authority's concerns. The situation was resolved through providing the grant to the Council who then provided the grant to Brick by Brick and through the Council providing a letter from its external legal advisors. The letter highlights the lack of enforceable obligation on Brick by Brick to undertake the work and does not address the absence of a signed written contract. We consider it would be reasonable to have expected these officers to reflect further on the informed challenge presented by peers from another local authority and consider whether the Council's approach was reasonable. Representations received from the then section 151 officer express the view that on the basis that the grant monies were received the Council's approach was reasonable. Our view continues to be that the level of challenge and concerns raised were significant and the Council could have taken the opportunity to reflect further on their own arrangement at that stage. We have not seen any evidence that these officers reconsidered the Council's approach.

### **Other legal considerations**

#### *Minimum Revenue Provision*

The Council is required by statute to make a prudent provision for the repayment of its debt and to have regard to Department for Levelling Up, Housing and Communities' guidance in calculating the Minimum Revenue Provision (MRP) and to publish its policy annually. (Statutory guidance issued under section 21 (1A) of the Local Government Act 2003 and the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003). As we reported in our 23 October 2020 Report in the Public Interest, the Council made changes to its 2019/20 MRP policy in respect of how much MRP is charged for borrowing related to loans to third parties. The policy means that no MRP has been set aside for the borrowing amounts related to the project.

To comply with state aid rules the draft loan agreements set out a commercial interest rate for Brick by Brick to pay. The Council's funding to Brick by Brick relied on the Council borrowing from the Public Works Loans Board (PWLB). PWLB charge the Council a lower interest rate than the commercial rate the Council charged to Brick by Brick. The Council's argument was that the difference in interest rates offsets the required MRP. The absence of properly executed written loan agreements means that the Council's right to receive interest on the funding provided to Brick by Brick is at best questionable and therefore

the borrowing related to the project requires MRP to be set aside. As the Council was not providing MRP against the borrowing in respect of its own asset, it is our view that the Council was likely breaching the statutory guidance.

Following discussion with the Council on our findings, the Council is now recording the project expenditure as direct capital expenditure. As a result, the Council has agreed to charge MRP on the borrowing related to the project from 2020/21. This is the year after the refurbishment reopened which is in line with the Council's existing policy and would appear to meet the requirements of the statutory guidance.

#### *Record keeping*

The Information Commissioner's Office "Section 46 Code of Practice – records management" issued under Section 46 of the Freedom of Information Act 2000 states 'Authorities should ensure they keep records they will need for business, regulatory, legal and accountability purposes' and that 'Authorities should define how long they need to keep particular records, should dispose of them when they are no longer needed and should be able to explain why records are no longer held'. The record keeping requirements of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulation 2012 and the Openness of Local Government Bodies Regulations 2014 are also likely to have applied.

The absence of records documenting the rationale for decisions in relation to a significant project is a failure to keep the records required and creates legal uncertainty and risk. Throughout the project there are elements where the Council's record keeping has been insufficient:

- Delegated decision implementation documentation is not systematically retained or stored to allow retrieval
- Financial analysis supporting decisions taken by the Cabinet is not available

#### **Recommendations**

**R1 The Chief Executive supported by the Monitoring Officer and the Section 151 Officer should ensure that Cabinet papers for major projects set out clearly**

**R1.1 the legal powers to enter into a particular arrangement and attendant risk**

**R1.2 how the Council can protect its interests and secure economy, efficiency and effectiveness.**

**R2 The Monitoring Officer should ensure that**

**R2.1 contracts are properly executed before entering into arrangements with third parties**

**R2.2 the properly executed documents are stored robustly to allow future scrutiny.**

**R2.3 key requirements underpinning the legal advice are in place before progressing with the arrangement**

**R3 The Monitoring Officer should ensure that where legal advice changes after a Cabinet decision that the consideration of the implications of the changes is documented and where the Monitoring Officer considers additional legal risks are identified that the Cabinet is updated on the impact on the original decision made.**

**R4 The Section 151 Officer should ensure that prior to making payments to third parties that appropriate legal documentation is in place such as a properly executed contract or a properly executed loan agreement**

**R5 The Monitoring Officer and Section 151 Officer should ensure that arrangements are in place to properly consider public procurement rules and UK obligations on subsidy control rules before entering into arrangements.**

**R6 The Chief Executive, Monitoring Officer and Section 151 Officer need to consider how to respond appropriately to challenge on decisions and be prepared to take corrective action where necessary.**

**R7 The Chief Executive should improve record keeping arrangements so that**

**R7.1 the records supporting key decisions including financial analysis are maintained**

**R7.2 a standard approach to record keeping with monitoring of which decisions have been implemented**

**R7.2 tolerances are established for reporting back changes to Cabinet**

## Governance

Significant concerns over the governance culture and reporting mechanisms between the Council and Brick by Brick have already been raised to the Council (in the Public Interest Report published on 23 October 2020 and the PwC review of companies dated 13 November 2020) and the issues with oversight of the Fairfield Halls Refurbishment reflect many of these concerns.

### Governance arrangements for Brick by Brick

The Cabinet paper approving the establishment of Brick by Brick in March 2015, delegated authority to agree the board structure and membership, human resourcing arrangements and to agree the processes and governance for monitoring the performance of the company and approving future Business Plans to the then Executive Director of Place (who became the acting Chief Executive in April 2016 and permanent from July 2016) in consultation with the Cabinet Member for Homes and Gateway Services, the then Section 151 Officer and the then Monitoring Officer. The delegated decision paper was signed in February 2016.

The June 2016 Cabinet paper sets out the governance arrangements in place between the Council and Brick by Brick which requires a detailed business plan to be prepared annually and reviewed by the Council and for there to be Council nominated Board members on Brick by Brick together with Council observers. The Council nominated Board members changed during the period and included the then Section 151 Officer until January 2016, when the then Deputy Section 151 Officer (who became the then Section 151 Officer in February 2019) was appointed until January 2019, when the then Executive Director of Place was appointed until September 2020. In January 2016 the Brick by Brick Board minutes record that the then Section 151 Officer 'will continue to attend board meetings as a shareholder representative, with 'observer status' from January 2016 and subsequent minutes refer to their attendance as the 'observer representing the funder'.

The first Brick by Brick Business Plan was presented in February 2017 and in February of subsequent years. There was no formally documented mechanism through which Council nominated Board members or observers reported back to the Council and therefore it is unclear how the Council sought to provide governance over Brick by Brick through the nominated Board members or observers.

The focus and the effectiveness of actions taken by the Council through its internal monitoring arrangements for Brick by Brick between establishment and November 2018 is unclear. Records indicate that the Council's need to improve its governance arrangements was recognized, for example:

- In November 2018 the then Section 151 Officer sent the then Chief Executive (the former Executive Director of Place) a draft paper on improving governance arrangements in relation to Brick by Brick.
- Meeting notes from the then Executive Director of Gateway, Strategy and Engagement (who joined the Council in August 2018 and took on that role in January 2019) show 'clienting' arrangements for Brick by Brick were discussed and identified as priority to develop.
- In April 2019 the then Executive Director of Gateway, Strategy and Engagement presented a formal terms of reference for the Brick by Brick Monitoring Group at its first meeting. [The Executive Director of Gateway, Strategy and Engagement has contended that she had also offered to undertake a governance review of the arrangements for Brick by Brick, but that this offer was not taken up.]
- At the September 2019 an updated terms of reference were finalised led by the then section 151 officer when they took on the chair role. At the same time other core group terms of reference were agreed including land, legal and finance and quality assurance.

The proposed reporting and escalation arrangements were changed between April and September 2019 and in August 2019 the responsibility was transferred from the Executive Director of Gateway, Strategy and Engagement to the then Section 151 Officer. (The terms of reference in April 2019 show that this was an officer only governance meeting and in September 2019, the terms of reference show that the Portfolio Holder for Homes and Gateway Services was included in the distribution list for papers and attended some meetings as an observer.). In our view the changes weakened the reporting and escalation routes however the rationale for the changes in responsibilities or in the reporting and escalation routes is unclear. We have seen correspondence requesting the views of both the Managing Director of Brick by Brick and the Portfolio Holder for Homes and Gateway Services on the terms of reference and the correspondence indicates that the views offered in response were considered although there is no record of the relative weight given to their contributions. It is our view that an officer led internal monitoring arrangement should not involve Members, although we appreciate that this view is based on our view of best practice in these particular circumstances and not upon a legal or regulatory requirement. There should have been a clear

distinction between the different roles and responsibilities of Members and officers The Shareholder Investment Board, established in October 2019, is the governance arrangement for Members to hold Brick by Brick to account together with the formal approval of the Brick by Brick Business Plan.

What is clear is that Cabinet delegated authority for establishing governance arrangements for Brick by Brick in March 2015 with a further decision in June 2016 and over two years later in Autumn 2018 officers continued to discuss the need for governance and monitoring arrangements with these being put in place in Autumn 2019. This timeline suggests a lack of urgency by the Council to establish appropriate effective governance arrangements over Brick by Brick.

The Council needed to clearly distinguish between the different roles and responsibilities of Members, officers and Brick by Brick representatives in the governance arrangements so that real and perceived conflicts of interests could be managed transparently.

### **Governance over the Fairfield Halls refurbishment project**

Initially the Council's oversight of the project was through the Council's Growth Board from 2015 when this was a Council run project and then through the governance arrangements established for Brick by Brick. Early in 2015 a competitive tender was used to appoint a contractor for the scheme design and development. In June 2015, a Project Initiation Document for the College Green housing development and Fairfield Halls refurbishment was drafted and reviewed by the Growth Board. Based on the initial design there was a high-level plan and initial costings for the project. Updates on the College Green and Fairfield Halls refurbishment project were taken to the Council's Growth Board until May 2017 with the Brick by Brick Managing Director attending after the project was transferred to Brick by Brick in June 2016.

In May 2017, the Fairfield Programme Board was set up when it was recognised that the Growth Board did not have sufficient agenda time to provide oversight of the Fairfield Halls refurbishment which was a complex and challenging project in its own right. This decision was influenced by an Internal Audit review that indicated the need for a dedicated programme board to meet regularly (as envisaged in the Project Initiation Document).

The Fairfield Programme Board (the Board) terms of reference included responsibility to:

- Provide formal input into the Fairfield Halls refurbishment and works packages including public realm aspects.
- Oversee the procurement and mobilisation of the new operator.
- Manage the delivery relationship with Brick by Brick.
- Approve any project or scope changes to be requested by the Council.
- Agree any new allocation of resources from new or existing capital and revenue budgets.
- Escalate significant risks to the Growth Board.
- Ensure that all significant risks are recorded and managed in line with Council policy.
- Manage the Council's external and internal communications about Fairfield Halls.

The then Executive Director of Place, who was the project sponsor, chaired the monthly Board meetings as the senior responsible officer on the project. The then Executive Director of Place continued to chair the Growth Board.

The available notes show that the meetings did discuss key issues such as delays, financial spend in excess of the budget and risks such as impact of the delays on the operator. There are instances where the meeting records note actions taken for example the December 2018 meeting noted the financial spend in excess of the budget on the project covered in the letters exchanged between the then Section 151 Officer and the Managing Director of Brick by Brick.

In theory, the structure put in place including the terms of reference should have been sufficient to manage the project.

As the project was a significant strand of Brick by Brick's activities, the wider Council could have expected its governance arrangements over Brick by Brick to identify matters of concern over the project through the Brick by Brick Business Plan, the presence of Council appointed members of the Brick by Brick Board and observers together with a proposed member steering group. The governance arrangements were not effective however as:

- The Brick by Brick Business Plan only included high level details of the Fairfield Halls project
- There was no formal documented mechanism through which Council nominated Board members reported to the Council and

- The member steering group was not set up until October 2019, a month after the Fairfield Halls reopened.

By November 2017 the [Fairfield Halls Programme] Board minutes note emerging budget pressures relating to the identification of additional asbestos and the construction contractor indicating that the £30 million estimate may need to be more. The Fairfield Halls Board monitoring papers have a total budget of £34.5 million despite the June 2016 Cabinet decision being for a £30 million investment.

In December 2017 the Brick by Brick Board received a report setting out the financial appraisal of the College Green programme which included the project cost, related public realm works costs, payments to the operator (BH Live), interest on additional borrowing which were offset by the projected profit from the Fairfield Homes development and expected grant funding from Coast to Capital leaving an expected College Green (which included the project) loss of £10.5 million. The financial appraisal appears to have been reported to the Brick by Brick Board only. The notes of the meeting show that apologies were received from the then Executive Director of Place, the then Section 151 Officer and their deputy and we have been provided with the email where the related papers were sent to these officers at that time. The then Section 151 Officer disputes having received these papers.

At the end of 2017 key elements of the issues with the project were known in particular

- the main works contract had not been let
- Croydon College were no longer part of the scheme impacting the land available for house building which was an important strand in the financial case for the wider College Green scheme
- The original engineering consultant had left the scheme necessitating the procurement of a primary engineering consultant
- Additional costs were incurred dealing with asbestos and meeting the needs of the operator that the Council had agreed in a separate contract
- The wider College Green scheme which included the project had a projected loss of £10.5 million

In October 2017 the project was called in by the Scrutiny and Overview Committee (the Committee) and in February 2018 the Brick by Brick Business Plan was presented to Cabinet. The 2018/19 Brick by Brick Business plan had a cover report which detailed the then Executive Director of Place as the relevant Lead Officer, and the then Portfolio Holders for Homes and Gateway Services and for Finance and Resources as relevant Cabinet Members. On neither occasion (the Committee and the Cabinet) were the extent and depth of the known issues highlighted formally to Members instead the impression given was all was progressing well. We consider that the transparency expected in both documents was missing. In particular we consider that:

- The Brick by Brick Business Plan should have highlighted to the shareholder the projected loss of £10.5 million on the overall College Green scheme which included the project and notwithstanding that it did not, the then Executive Director of Place, the then Section 151 Officer and their deputy, were they aware of this (on the basis that the related papers would have been provided to them in December 2017, as set out above), should have flagged this in the cover report to the Cabinet together with any action; [we have seen no evidence that the Portfolio Holders were aware of the projected loss]. Instead, the Cabinet report makes reference to the risk for existing schemes from escalation of cost estimates and time delays with the conclusion that Brick by Brick is *'currently projecting to achieve a profit of £21 million on its existing development activity in addition to the £30 million investment into the refurbishment of Fairfield Halls'*.
- One of the original assumptions of the wider College Green scheme was for the Council to purchase land from Croydon College to be made available for house building. Early in 2018 Croydon College rejected the offer for the land and progressed with an alternative purchaser. We have not seen evidence of the financial impact of a change in a key assumption being reassessed by the Council or that the Cabinet was updated formally on this change.

Brick by Brick is of the view that the detailed financial models were provided to officers to support all funding requests. Neither the business plan nor the cover report presented to the Cabinet however provided the detailed financial modelling. Brick by Brick is of the view that the Council had the relevant information to challenge the business plan and that there was no request to provide greater clarity on the project within the business plan. In our view, the projected increased project cost at that time was known by the Brick by Brick Board and the then Executive Director of Place, as a member of Brick by Brick's Board, and the then Section 151 Officer, as the Council appointed observer of the Brick by Brick Board. All were aware of the increased

project cost and the known increased costs should have been highlighted to both the Cabinet and the Scrutiny and Overview Committee either by requiring Brick by Brick to highlight the known increase or identifying the amount in the covering report to the Cabinet. The absence of reporting the known loss to a formal Member meeting did not enable scrutiny by the wider Council.

By June 2018 the project monitoring documents showed the expected project spend being £42.8 million. In September 2018, the Brick by Brick Managing Director sent a copy of the financial monitoring reports to the then Chief Executive highlighting the additional spend in excess of the budget. The main works contract was not let by Brick by Brick until October 2018, three months after the original project completion date, and the project cost was £42.7 million. Brick by Brick confirmed the contract amount to the then Executive Director of Place on 9 October 2018. At this point the project cost clearly significantly exceeded the amount approved by Cabinet in June 2016 of £30 million and it would be reasonable to expect officers to formally report back to the Cabinet. Brick by Brick informs us that the contract was let in line with the strategy agreed with the Council and the increased costs reflect the 'constantly changing brief' indicating that both the delay and the increased costs were known within the Council however we have not been able to identify any formal reporting to the Cabinet.

In October 2018 Brick by Brick wrote to the Council's Section 151 Officer setting out a shortfall of £28.8 million on the College Green scheme (which included net expenditure of £49.2 million on the refurbishment project) setting out the proposed strategy to cover the increased costs. The then Section 151 Officer replied in November 2018 noting the proposed actions which were:

Source	Amount	Description
Brick by Brick	£18.3 million	Full value profit from the scheme (£17 million) and ongoing revenue generation from the energy centre (£1.3 million)
Council*	£7.6 million	Unforeseen asbestos removal costs and additional costs for delivery of the operator requirements
Coast to Capital**	£3 million	Redirected grant funding from the Arnhem Gallery part of the project into the general project
	£28.8 million	

\* The then Section 151 Officer agreed that the Council would contribute £1.6 million for the operator fit out costs and proposed to flex the overall repayment to manage the remaining gap of £6 million.

\*\* The Local Enterprise Partnership, Coast to Capital, provided grant funding to the project including £3 million for the refurbishment of the Arnhem Gallery. As the project spend grew, the Council was granted permission from Coast to Capital to divert the grant funding into the wider scheme.

In our view, the solutions were problematic in that:

- Brick by Brick's proposal to 'attribute the full value of Brick by Brick profit' from the College Green scheme (estimated to be £17 million at that time) to meet the additional costs of the project is a significant decision for any company to make. We note Brick by Brick wrote to the Council, its shareholder, setting out the proposed action and received an acknowledgement from the then Section 151 Officer. Brick by Brick is of the view that its financial viability model was based on profits generated by the College Green scheme to fund the project and that its involvement in the project was important to Brick by Brick as it gave 'the opportunity to be involved in a high-profile project with enormous value potential'. We remain of the view that the decision to attribute the full value of profit at £17 million from one project to another is an unusual decision for an independent company to make and is a decision that opens the Council to the challenge of whether Brick by Brick was operating as an independent company which is a key requirement of whether the Council's arrangement is legal.
- In addition, the decision to attribute the full value of profits from one element of the College Green scheme to fund additional project expenditure is significant to the Council as it would impact the Council's receipt of future dividend from Brick by Brick and as such it would be reasonable to expect the then Section 151 Officer to report the decision formally to the Council. We have found no such evidence. The then Section 151 Officer is of the view that as the dividends were not included within the Medium-Term Financial Strategy (MTFS) there was 'a very minimal impact' and 'a lower estimated future profit would have no immediate impact'. We acknowledge at that time the MTFS did not

include future dividends from Brick by Brick. It is our view that a decision impacting £17 million is significant to both the Council, even where it is not included in the MTFs, and Brick by Brick and therefore Members should have been informed formally by both the then Section 151 Officer and by Brick by Brick in their next business plan. Brick by Brick is of the view that they met their responsibilities in informing their shareholder and Brick by Brick was not asked to provide more detail in their business plan. The then Section 151 Officer asserts that Cabinet members were briefed on the actions although we have not been able to obtain evidence to support this. The arrangement opens the Council to challenge of the soundness of its investment in Brick by Brick.

- The Council's proposal to transfer a car park associated with the project to Brick by Brick at its carrying value of £6 million was not supported by an assessment of the best value of that land as required by section 123 of the Local Government Act 1972. The proposal was not co-ordinated within the Council as another contract was issued to the operator with the associated income being included in the Council's budget and this income would not have been receivable by the Council if ownership of the car park was transferred. In addition the Council's legal transfer documents for the car park and heads of term for the lease were drafted but remain unsigned.

The Fairfield Halls Board terms of reference include 'all significant risks are recorded and managed in line with Council policy' and 'escalate significant risks to the Growth Board'. From the Council's perspective the view was that the financial risk would be managed in that any spend in excess of the budget would be the responsibility of Brick by Brick and would be covered by their profits. However as the licence (and the land transfer– although this was not followed through in full) gave Brick by Brick full control over the specification of the Fairfield Halls works, the response by Brick to Brick to the additional costs was to cover these through 'value engineering' adjustments. It is clear that the Council did not set out a clear understanding of the legal aspects of the intended land transfer approach with Brick by Brick as the Brick by Brick Managing Director has responded by saying that 'there was an obligation on Brick by Brick to work in partnership with the Council to define and agree the specification for the works. Had Brick by Brick had full control over the specification, we could have delivered £30m worth of improvements of our choosing to the building without any recourse to the needs or desires of the Council'.

The Growth Board exception report for October and November 2018 highlights the project as an area of concern with the spend in excess of the budget noted as £15.89 million, indicating that the significant risk on project spend was reported to the Growth Board. The Growth Board's terms of reference require escalation to the officer led Executive Leadership Team or via other Council processes 'as it sees fit' for breaches outside of specified tolerances. The tolerances included:

- overspends of the greater of £50,000 or 0.1% of the project overspend
- project delays past the financial year into another year

The approval decision in June 2016 was for a £30 million project to be completed by June 2018. In October 2018 the tolerance of a £50,000 / 0.1% of the project budget overspend (as reported to the Growth Board) and delayed project into a future financial year had been significantly breached. It is not clear whether the significant additional spend was escalated to an officer led leadership team or via another Council process. In our view, the then Executive Director of Place, as Chair of the Growth Board, had a responsibility to escalate a reported spend in excess of budget of £15.89 million to a formal Cabinet. We have been unable to identify any evidence of the escalating risks being reported to Cabinet formally.

The December 2018 Fairfield Halls Board minutes refer to the exchange of letters on the financial position. We consider that the letters and the minuted reference to the letters indicates that then Executive Director of Place, as chair of the Fairfield Halls Board, the then section 151 officer and Brick by Brick were all aware of the known additional spend and had a duty to escalate the increased spend formally. We have seen no record of the significant increased spend being escalated to the Cabinet formally.

The 11 December 2018 Scrutiny and Overview Committee included an item on Fairfield Halls which would have provided an opportunity for the known additional spend in excess of budget to be highlighted to Members for their consideration and challenge however the presentation focused on questions to the operator. (We have no evidence that the operator was aware of the additional spend in excess of the budget.) This was a missed opportunity to highlight to Members the scale of the known additional spend at that point.

The 16 January 2019 Growth Board notes record that

'Council as a shareholder and funder allowing BBB longer to pay back on equity so it won't emerge as a capital over spend. The financial impact on Council is that our company makes less profit over the medium term'

The then Executive Director of Place and the then Section 151 Officer are recorded as being present for the meeting and could be considered to have knowledge of the discussion. Based on the January 2019 Growth Board notes the rationale

appears to be that 'the equity in Brick by Brick would be sufficient to cover the known overspend'. We consider the rationale to be fundamentally flawed as:

- the Council had not to date provided any equity funding to Brick by Brick
- Brick by Brick at that time had not made a profit and therefore it would not be in a position to cover the additional spend of £15.89 million

These facts should have been known by the then Executive Director of Place as a Brick by Brick Board member and the then Section 151 Officer as a Brick by Brick Board observer. The then Section 151 Officer has expressed the view that the intention was for equity to be provided at the end of the project which had not been reached at that point. We have not been provided with evidence of how the intended equity was included in the Council's forward financial plans.

The 2019/20 Brick by Brick Business Plan was presented to the February 2019 Cabinet meeting. The College Green scheme is identified in the Business Plan, one table shows that the projected profit for the College Green was £0 against a sales income of £177.5 million. The presentation, the Council covering report and the Business Plan did not provide a clear or transparent update on the College Green £28.8 million increased spend set out in the exchange of letters between Brick by Brick and the Council or the mitigating actions agreed. Respondents assert that the increased spend was included within the financial modelling that supported the Brick by Brick Business Plan which could be considered to have met Brick by Brick's responsibilities. The then Executive Director of Place and the then former Section 151 Officer (having passed the role onto their deputy on 1 February 2019) were aware of the significant increased spend and could reasonably have been expected to be aware that Brick by Brick's business plan did not provide clarity to the Cabinet on the potential financial risks associated with the College Green project. In not providing that clarity or challenging the lack of clarity these officers failed in their responsibilities to the Council.

We have received representations from officers that the lack of estimated profit for a significant scheme was included in the report and 'could have been open to question at the meeting'. We accept that the position of a £177.5 million scheme delivering £0 profit is included within the Business Plan; in our view, as acknowledged by respondents, this 'is clearly an unusual for a company'. In our view the significance of the lack of estimated profit on the College Green scheme should have been highlighted by officers to draw attention to the matter in the covering report to the Cabinet to provide greater clarity on the potential financial risks associated with the College Green project. The matter was known to the then previous Section 151 Officer (who ceased to be section 151 officer on 1 February and remained employed by the Council until March 2019) and their successor\* and the then Executive Director of Place.

\*The section 151 officer changed on 1 February 2019, the previous Section 151 Officer who signed the November 2018 letter to Brick by Brick remained in the Council's employ until March 2019 and continued to have a duty to ensure the significant additional spend was reported formally to Members. The Section 151 Officer from 1 February 2019 was a Director of Brick by Brick Board member from January 2016 until January 2019 and we therefore consider they could reasonably have been expected to be aware of the additional spend at that point, which they have acknowledged; however, they have asserted they were not aware that the known additional spend had not been formally agreed with the Cabinet.

At the June 2016 Cabinet, the original delivery date for the project was June 2018 and the actual reopening of Fairfield Halls was September 2019. The June 2016 Cabinet decision approved a £30 million investment for the project that has had a final expenditure of £67.5 million. Both the delays and the escalated costs were known by the then Executive Director of Place, the then Section 151 Officer and the then Chief Executive and there is no evidence of the emerging risks being reported to the Cabinet formally. All had the position and experience to understand their responsibilities to escalate the concerns and there is no formal record of any of this small group of officers doing so. The responsibilities are particularly clear for the senior statutory officers: the Chief Executive and Section 151 Officer as these are set out in statute\* and the Council's Constitution. Representations received from this group of officers indicate that in their view concerns were raised to the relevant Portfolio Holders however we have not been able to obtain a written record of the concerns, who they were raised to or at which meeting. There is an onus on the relevant Portfolio Holders (for Homes and Gateway Services, for Finance and Resources and the Leader) to ask appropriate questions of senior officers and to require clear reporting to Cabinet on the progress of a complex project. Representations received from the relevant Portfolio Holders indicate that in their view concerns were not reported to them [and that there is in their view no evidence of a failure to ask appropriate questions]. Without evidence to support either viewpoint, [and in particular without detailed evidence of what questions were put to senior officers by the relevant Portfolio Holders in this regard], it is clear that there were known issues and effective action was not taken. In our view these officers and Portfolio Holders failed to exercise their functions and responsibilities adequately.

As chair of the Board and the senior responsible officer for the project, the then Executive Director of Place was responsible for ensuring the effective operation of the Board. The fact that the project was delivered late, overbudget with the current view from the Council that additional works are required indicates that the then Executive Director of Places was not effective in delivering the agreed terms of reference. There is evidence of the delays and additional costs being reported at the Growth Board, also chaired by the then Executive Director of Place. We would have expected the Growth Board to have considered the scale of the additional spend to require reporting to Cabinet.

The failure in governance appears to stem from the viewpoint that the project was for Brick by Brick to manage and any risks and cost overruns were for Brick by Brick to address. This viewpoint has been expressed by the then Chief Executive, the then Section 151 Officer, the then Leader, the then Cabinet Portfolio Holder for Finance and the Managing Director of Brick by Brick. In our view that viewpoint is flawed in that Brick by Brick was both:

- Wholly owned by the Council meaning any profits or losses would be consolidated into the Council's group accounts and ultimately impact the Council's financial position; and
- at that time the sole source of funding for Brick by Brick was from the Council.

*\* Statutory responsibility for the Chief Executive is Local Government and Housing Act 1989 section 4 and for Section 151 Officer is the Local Government Act 1972 section 151.*

#### *Role of Scrutiny and Overview Committee*

The Scrutiny and Overview Committee (the Committee) were active in considering the refurbishment of Fairfield Halls on at least six occasions between 2016 and 2020. Members of the Committee raised pertinent questions including on project management and the potential additional spend on the project. The magnitude of the financial additional spend on the project was not reported to the Committee and the lack of transparent reporting prevented adequate scrutiny as noted above.

At the 10 February 2020 Committee, the Brick by Brick representative confirmed that the current estimated cost for the project was £42.6 million. The then Executive Director of Place was also present at that meeting. Members on the Committee have a reasonable expectation that the figures reported are accurate. Both the Brick by Brick representative and the then Executive Director of Place were in a position where they could and should have known that the project cost exceeded £42.6 million in that:

- The mains work contract was let in 2018 for £42.7 million
- The October 2018 Brick by Brick Board minutes note the project spend was £50 million.
- The letter from Brick by Brick to the Council in October 2018 highlighted that the total project costs were £50 million (The £50 million was for Fairfield Halls alone with the letter including separate amounts for other elements of the College Green scheme including the car park and public realm).
- As at January 2020, the Council's records show that the Council had provided cash drawdowns to Brick by Brick in respect of Fairfield Halls project of £59.9 million.

Brick by Brick has expressed the view that 'it was not the role of Brick by Brick's representatives to offer contradictory advice to Members'. The reason for the gap between the known project expenditure and the amount reported to the Committee is unclear. In our view the gap was significant and as such the Committee was hampered in its role to scrutinize the project expenditure.

Between 2016 and 2020 the Committee also questioned the then Leader on the project on at least five occasions during the same period, although as above it is unclear whether concerns had or had not been raised to the Leader by the senior officers regarding the project, in light of representations received.

#### **Financial position of the project**

The monitoring of financial outcomes is intrinsically linked to the project progress and therefore financial governance is impacted by the weakness in governance over the project section.

#### *Original project budget setting*

The September 2014 Cabinet paper had the original project budget of £33.75 million. By October 2015 the Cabinet report indicates that the Council intended to provide Brick by Brick with loan finance to fund the costs of the project and to fund the costs of building the residential units. The June 2016 Cabinet report refers to a £30 million investment in Fairfield Halls and the confidential report states

‘the financial appraisal and development assumptions for the land at College Green proposed to be transferred to Brick by Brick have been tested by the Council and found to be prudent for this stage of the development process.’

We have not been able to obtain the financial appraisal and development assumptions referred to in the confidential June 2016 Cabinet report and are therefore unable to comment on the robustness of that appraisal. We consider the financial appraisal supporting a decision to invest £30 million to be a key document that should have been maintained by the Council to enable subsequent scrutiny and the absence of such a document is a weakness in record keeping. Respondents have stated that £30 million was not the original budget. We have been unable to identify any Cabinet report after June 2016 which approved a budget for the project and we therefore consider £30 million to be the original budget. The February 2020 Scrutiny and Overview Committee meeting referred to a £30 million original budget.

Without the detailed financial appraisal, it remains unclear whether the additional expenditure over the original budget reflects issues in the original budget setting or issues in managing the project’s expenditure or a mix of both. A detailed scope for the refurbishment of Fairfield Halls was provided by the original engineering contractor in September 2015 which was costed at £73 million. There is evidence that this detailed scope was discussed by officers at that time as would be expected. It is not clear from the evidence available to us how the September 2015 scope connects (or if it connects at all) to the project presented to the June 2016 Cabinet.

In the absence of the original financial appraisal our understanding is that the project was intended to be cost-neutral to the Council with Brick by Brick using expected profits from the College Green scheme to cover the costs of the project. This understanding is based on

- The November 2017 Fairfield Halls Board minutes which note that the budget gap identified at that time was ‘Financial risk minimal for council it will be Brick by Brick issue’
- The December 2017 Brick by Brick Board report which sets out that ‘the expectation for delivering the wider College Green projects was that the land value for the homes development would be £nil (acting as a barter transaction to fund the refurbishment of Fairfield Halls).’

Under section 123 of the Local Government Act 1972 the Council has a duty to achieve best value in land disposals. We have not been able to obtain the Council’s assessment of whether £30 million for the land provided to the College Green projects represent best value and therefore we cannot conclude on whether the Council achieved this duty.

#### *Final cost of the project*

The Council provided funding to Brick by Brick through drawdowns and recorded those amounts in its financial statements. The Council has maintained records of the requests however as noted earlier there are no related properly executed written loan agreements providing a legal basis for making payments to Brick by Brick.

According to the underlying financial records:

Financial year	Council Funding provided to Brick by Brick for Fairfield Halls refurbishment	Expenditure incurred by Brick by Brick (from financial ledger)
2016/17	£1.2 million	£1.5 million
2017/18	£9.5 million	£7.5 million
2018/19	£19.9 million	£30.3 million
2019/20	£37.2 million	£27 million
2020/21	-	£1.2 million
Total	£67.8 million	£67.5 million
Adjustments – late VAT and invoices	(£0.3 million)	
Spend on Fairfield Halls refurbishment	£67.5 million	£67.5 million

\* Funding provided includes Coast to Capital grant funding

It is a serious financial control and legal failing that payments in excess of £60 million were made to a third party without sufficient clarity as to the powers relied upon or any properly executed written contracts. Both the then Monitoring Officer and the then section 151 officer had a responsibility to ensure that the legal loan agreements were properly executed prior to making payments. In our view, officers treated Brick by Brick as an extended department of the Council in terms of the financial payments made, and did not ensure the level of rigour we would have expected. Had the legal agreements been entered into and monitored, it is likely that the Council could have monitored the position of the loans provided for the project and this would have enabled the Council to have ceased to make loans beyond the original budget or to have invoked loan covenants or to have escalated that the project's financial viability had been breached. In the absence of properly executed written contracts, the payments described as loans do not appear to have been subject to any such oversight.

The actual cost of the project has been difficult to establish which in itself is a serious failing that the Council's financial arrangements are not sufficiently robust to monitor the expenditure on a significant project. The Council was able to demonstrate the amounts the Council provided (recorded as loans) to Brick by Brick for the project. The actual spend by Brick by Brick has taken the Council's finance team longer to determine. The final cost of the project at £67.5 million is significantly greater than the £30 million originally approved at the June 2016 Cabinet. There are a number of factors to explain the spend in excess of the original budget including a lack of Council arrangements in the:

- robustness of the original budget setting
- clear financial monitoring
- monitoring the complexity of co-ordinating contractors on a complex project leading to a dispute with the original engineering contractor (note that although this is disputed by Brick by Brick the relationship ended and the Adjudicator's decision on the financial resolution was found in favour of the contractor with the Council having to pay the contractor's and Adjudicator's cost.)
- effective risk mitigation
- project oversight and scrutiny
- implementing the governance arrangements in the June 2016 Cabinet report

Brick by Brick expressed the view that 'the principal cause of cost increase relates to contract variations and specification delays by the Council and other essential unforeseen works (such as asbestos and structural issues)'. Brick by Brick's view implies that there was both a 'contract' and a 'specification'. We have not seen contractual variations supporting Brick by Brick's view. As noted above, we have not seen properly executed written contracts obliging Brick by Brick to carry out the work in accordance with any specification or enabling the Council to vary the specification; the idea that there was a 'specification' highlights the risk identified by the Council's legal advice that a specification would engage a risk of challenge in the licence / land transfer option route which it pursued.

The Council as the owner of Fairfield Halls would have had knowledge of both the structure of the building and the presence of asbestos and the costs related to these aspects should have been foreseeable by the Council in setting the original budget.

A number of respondents expressed the view that the financial impact was for Brick by Brick to manage. The Council as owner of Brick by Brick has always been required to account for any losses or profits made by Brick by Brick and this is shown through the group accounts. Therefore the Council had a responsibility to understand significant financial risks impacting Brick by Brick which we would argue the project represented. As ultimately the Council would need to account for any significant loss we remain of the view that the Council's arrangements to manage the risk of any increase in cost were not sufficient. The increase in costs was known, it was reported through the Fairfield Board and the Growth Board. The lack of transparency of the increased costs being reported to formal Member meetings has led to the position where it is unclear whether effective action at the time could have been taken to mitigate the financial risk to the Council.

In establishing the financial position of the project there were changes in financial record keeping during the project that contributed to the lack of clarity. The Council changed its financial system from 1 April 2019. Brick by Brick has provided representations that there was a period of five months in 2019 where Brick by Brick had to manage its finances without access to the system with a delay in migrated data being made available.

Taken together the Council missed opportunities to manage the causes of the increasing costs and has, as noted in our 23 October 2020 Report in the Public Interest, again imposed on council tax payers of Croydon an increased borrowing burden.

### *Impact on the Council's financial position*

As noted earlier in the report given the uncertainties in the properly executed written contract and properly executed written loan agreements as a basis to make payments in relation to the project has led to the Council reconsidering its accounting treatment of the project expenditure. In the absence of a clear lawful basis for making payments to Brick by Brick for the refurbishment of Fairfield Halls, the Council is now recording the project expenditure as direct capital expenditure in the 2019/20 financial statements. The uncertainty on the lawfulness of the arrangement led to the Council's revised approach.

The majority of the adjustments to the 2019/20 financial statements impact the capital reserves position however there are some key revenue impacts on interest receivable and the minimum revenue provision which impact on the Council's General Fund position which is already under significant pressure. Key adjustments include:

- Loans receivable – without properly executed loan agreements the Council cannot account for the £61.3 million funding provided to Brick by Brick as receivable and the amounts have needed to be written off in the Council's accounts (noting that in the group accounts the entries would be subject to consolidation processes)
- Interest receivable – The Council has access to low interest rate borrowing from the Public Works Loans Board and part of the financial rationale for lending monies to Brick by Brick was that the Council would charge Brick by Brick a commercial interest rate. The Council has accrued interest of £9.1 million as at 31 March 2021 which will need to be written off as the amounts are no longer considered to be receivable without properly executed loan agreements, and as the Council's approach has now changed with the underlying loans being classified as capital expenditure.
- Minimum revenue provision (MRP) – as noted earlier the Council needs to account for MRP in future years' budgets and we estimate that the charge would be approximately £1.5 million per annum over the life of the refurbishment depending on the Council's assessment of how long the refurbishment will remain useful. The Council has included this in future budgets.

The view of the then Section 151 Officer was that the strategy of providing the last 25% funding of the project as equity would have included MRP. The unsigned loan agreement documents show that the intention was for funding to be split 75% debt and 25% equity funding. At the time of the then Section 151 Officer's departure no equity had been provided to Brick by Brick on the project or indeed on any other Brick by Brick project.

The Council's failure to establish and manage the project appropriately has led to further financial pressure on the Council's challenging financial position.

### **Recommendations**

**R8** *The Chief Executive, as Head of Paid Service, should ensure appropriate governance arrangements are implemented in a timely manner particularly for strategic developments such as Brick by Brick including where appropriate that there is clear guidance for nominated representatives on the expectations of the role including reporting back to the Council*

**R9** *The Chief Executive should work with the Leader to continue to embed*

**R9.1** *a clearly understood distinction between the different roles and responsibilities of Members, officers and representatives of entities akin to Brick by Brick.*

**R9.2** *clear responsibilities for officers and Portfolio Holders in challenging reports presented to Cabinet and other committees for balance, accuracy and consistency in terms of knowledge*

**R10** *The Chief Executive should review the terms of reference for officer and member/officer boards that oversee significant projects and capital/revenue expenditure and clarify the escalation routes for significant additional spend in excess of the budget*

**R11** *The Section 151 Officer should ensure financial reporting on significant capital projects is enhanced so that*

**R11.1** *a clear agreed budget for the project is identified and the underlying financial analysis is maintained*

**R11.2** *the clear agreed project expenditure amount can be reported through appropriate governance processes*

**R11.3** *where there are changes in the original financial assumptions that there is an assessment on the project's financial viability with appropriate reporting*

**R11.4** *the revenue impact of any changes in the capital project are addressed in future budget setting*

## Other auditor concerns

As part of our work, we have also identified further areas of concern which impact on the delivery of the project.

### **Project management - Co-ordination of contractors**

The project involved a number of contractors and relied heavily on successful co-ordination of the design, build and operator elements, each of which lay with a separate contractor. An additional complexity was the subcontracting of project management responsibilities by Brick by Brick to a fourth contractor. There was a highly complicated series of interdependencies and the deficiencies in co-ordination between contractors (including the need to replace one contractor during the project) being a contributor to the delays, additional costs and quality of delivery issues.

Delays in the establishment of the dedicated Fairfield Board until May 2017, meant that the procurement of the Operator by the Council, and the main works provider by Brick by Brick lacked an effective mechanism to co-ordinate both contractor requirements at an early stage. The Council was limited in terms of what it could require of Brick by Brick due the Council's original decision to use the development licence option (although we note the outcomes would equally have been limited if the proposed land transfer option had been completed). Therefore, there was no effective mechanism to mitigate the co-ordination risk that became critical in the latter stages of the project, contributing to delays, additional cost and contractor disputes.

The relationship between Brick by Brick and the original engineering consultant broke down with the resolution of increased costs being decided by the Adjudicator. The need to assimilate a replacement engineering consultant mid-project and in a short period of time, was highly challenging and is likely to have contributed to the delays and cost implications.

As there was not a competitive tendering process by the Council to support the appointment of Brick by Brick to manage the project, there is no evidence that the credentials and suitability of Brick by Brick to manage a complex refurbishment project were assessed by the Council prior to selection. At the time the licence was granted, Brick by Brick was newly established without a track record of delivery. We acknowledge that Brick by Brick's articles of association allow commercial developments and not solely housing developments and that the Brick by Brick Board was in a position to assure itself of its ability to manage the project; however the Council did not have appropriate methods of oversight in place. There is also no evidence of how other factors such as value for money and risk were assessed by the Council. Representations received from Brick by Brick state that from Brick by Brick's perspective the financial viability of the project was linked to the wider College Green scheme which was in the best interests of Brick by Brick. Their view is supported by Brick by Brick Board discussions of external advice received at that time.

In our view it was not appropriate for the Council to include the refurbishment of Fairfield Halls within a housing development scheme as the projects are very different and require different mechanisms for the Council to be able to secure value for money. The complex interdependencies were foreseeable for the Council and the Council's decision to use Brick by Brick with an arrangement that prevented a legally enforceable obligation to comply with detailed specification for the project should have been supported by a more detailed risk assessment and more robust governance arrangements that responded as risks emerged.

### **Value for money**

In relation to how the Council was able to protect its interests and secure economy, efficiency and effectiveness in its use of resources in relation to the Project, the Council's overall approach was intended to be that the transfer of land to Brick by Brick for development with the value of the land being the same as the estimated cost of refurbishment. Based on representations received, the intention was for the Council to secure the refurbishment of Fairfield Halls and to receive future dividends from Brick by Brick generated from profit as part of the wider College Green scheme.

The Council's detailed financial analysis at that time (June 2016 Cabinet) cannot be found by current Council officers and we are unable to conclude on whether the underlying assumptions were reasonable or not. Brick by Brick did obtain advice on the financial viability of the wider College Green scheme however as would be expected this advice was from a Brick by Brick perspective.

Notwithstanding, the failure to secure legality in the arrangement through a properly executed written contract, the intended arrangement involved a licence to access the building which would only require method statements to address how work would be carried out. The intended approach prevented the Council from issuing a detailed specification with which Brick by

Brick would be obliged to comply. It is difficult to see how the Council's intended approach would have secured economy, efficiency and effectiveness in relation to the project.

The Council did establish governance arrangements which required additional spend reported to the Fairfield Hall Board to be escalated to the Growth Board and where tolerances for additional spend are breached for further escalation to the Corporate Leadership Team or via other Council process as it sees fit. The additional costs exceeded the budget by £15.89 million, which breached the tolerances, and was reported to the Growth Board. The costs in excess of the budget was not reported in a clear and transparent manner to a formal Cabinet meeting. Representations received and meeting notes indicate the view at the time was that 'any overspend was for Brick by Brick to manage'.

In our view the governance arrangements did exist to identify and report the known additional spend however the governance did not operate as intended due to the Council's viewpoint at that time which was the financial risk remained with Brick by Brick. We consider this viewpoint misunderstands how any profits and losses of Brick by Brick impact the Council as the shareholder.

It is unclear whether informal mechanisms were used to raise concerns about the project. We have received representations from former officers stating that 'Lead Members' were briefed and that concerns were either not listened to or support was not provided and we have received representations from the three Members consulted that concerns were not raised. In the absence of documented discussions, it is difficult to reach a view on this point. It is however clear that senior officers (namely the then Executive Director of Place, the then Section 151 Officer and the then Chief Executive) should have been aware that the project's original approval of £30 million had been exceeded as this was reported in emails, Fairfield Hall Board papers and Growth Board papers.

### **Conflicts of interest**

There were inherent conflicts of interest in managing a complex project through a wholly owned company. As noted in Internal Audit's review of Fairfield Halls in December 2020, there was a lack of an assessment of the real or perceived conflicts of interest. At one point the then Executive Director of Place was the project sponsor, chaired the Growth Board, chaired the Fairfield Board and was also the Council appointed Director on the Board of Brick by Brick. The inherent conflicts of interest of delivering each of those roles simultaneously should have been visible to both the then Executive Director of Place and the then Chief Executive who was their line manager, however these conflicts were neither addressed nor mitigated.

### **Delegated decision making**

It is within the Council's Constitution to delegate decisions from Cabinet to named officers in consultation with Cabinet Portfolio Holders and in October 2015 the Cabinet delegated to officers, in consultation with relevant Cabinet Portfolio Holders, the authority to enter into relevant commercial agreements to progress the vision. In June 2016 a further paper was brought to Cabinet which approved the proposal to use Brick by Brick to bring forward elements of the College Green scheme including the refurbishment of Fairfield Halls.

There are a number of related issues

- Record keeping - There is a template to record the action taken in implementing delegated decisions which sets out the actions and is signed by the relevant Executive Director and relevant Portfolio Holder. During our work it has become evident that the retention of the formal documentation rests with individual Executive Directors and their local support arrangements. As personnel have changed, the retrieval of signed delegated decision sheets together with supporting documentation has become problematic and this gap in record keeping has led to gaps in demonstrating how delegated decisions were implemented. The lack of systematic and robust record keeping undermines the Council's governance arrangements, creates legal uncertainty and risk and fails to meet the good practice recommendations in the Information Commissioner's Office "Section 46 Code of Practice – records management" issued under section 46 of the Freedom of Information Act 2000.
- Reporting back to Cabinet – where decisions are delegated to officers in consultation with relevant Portfolio Holders there is an expectation that the decision will be implemented in line with the business case which Cabinet approved. With the Fairfield Hall refurbishment project there were fundamental changes that impacted the underlying assumptions for example the additional spend and the withdrawal of the Croydon College land. The decision was delegated to the then Section 151 Officer in consultation with the Portfolio Holder for Homes and Gateway Services and for Finance and Resources and we have not seen evidence that any of these individuals formally updated the Cabinet on the change in circumstances (although the Portfolio Holder for Finance and Resources has made

representations that in his view there was no need to formally update the Cabinet, as the additional spend was a matter for Brick By Brick, while the withdrawal of the Croydon College land was in the public domain and subject to questions by full Council). However, in our view, the lack of formal update to Cabinet did restrict wider scrutiny of the project by other members of the Cabinet or other members.

- Delays in implementing delegated decisions – It is important that where there are delays in implementing delegated decisions that updates are provided to Members to allow consideration of changes in circumstances. There is currently no guidance on what an appropriate time period is to implement a delegated decision or when a review of change in circumstances should be undertaken.

In our view, the Council should develop its governance arrangements to include clarity on record keeping standards (taking into account the statutory Code of Practice), time limits where there are delays in implementing delegated decisions and guidance on when changes in the known facts or risk profile require reporting back to the original decision maker.

### **Recommendations**

*R12 The Chief Executive should put in place arrangements to consider inherent conflicts of interest for executive officers.*

### **The Council's position**

The Council has acknowledged the difficulties arising from the arrangement, stating, in a letter from the then Section 151 Officer on behalf of the Council during the value for money review, as follows:

*“The Council sought and obtained legal advice subsequent to the June 2016 Cabinet decision in relation to the public procurement regime and its application to the Fairfield Halls scheme. [...] Although the advice assumed an actual land transfer under an option agreement (with buy back and security) the Council elected to grant licences to carry out demolition and other works to the Halls. This was consistent with legal advice, insofar as it meant that there was no enforceable obligation to carry out works. It is recognised however that the overall procurement law position was dependent on the company remaining truly independent and that, as you identify, this was not given sufficient weight. Equally, the Council has not been able to locate all documents entered into by way of licence to carry out works on Council land.*

*In relation to how the Council was able to protect its interests and secure economy, efficiency and effectiveness in its use of resources in relation to the Project, the Council was reliant on the commercial incentive on the Company to control costs and maximise returns. As sole shareholder, as might be expected, the Council had an ability to monitor and control this. No contractual mechanism was applied however, given that no loan agreements were entered into and that the terms of any licence would only require method statements to address how work would be carried out. The external legal advice did make the point that although the Company was not subject to procurement law, it would still be expected to be interested in securing value for money through conducting a competitive tender process for works/services.*

*In summary, whilst the Council did take advice it is recognised that the Council should have sought that advice earlier and in greater depth, and should have then acted on that advice.”*

The Council has, in light of the matters reported upon here and their views as set out above, proposed to account for the expenditure on the project as if it had been direct capital expenditure by the Council (as if the Council had initially merely spent the money on the refurbishment itself, rather than providing a loan the Brick by Brick to carry out its own refurbishment).

## Conclusions

The Fairfield Halls refurbishment project was a complex project which was delivered later and at a higher cost than the original Cabinet approval in June 2016. and overspent. The Council failed to ensure the legality of the arrangements for the project combined with governance gaps which restricted wider scrutiny and challenge that may have allowed corrective action to have been taken. Whilst we have been provided with interview information and written assertions that the matters in this report were raised with by officers to the Portfolio Holders they reported to, we have not been able to obtain evidence to verify the content of informal briefings by officers or the questions Portfolio Holders asked of officers.

Representations received from the relevant Portfolio Holders assert that they did not receive any such briefings or updates. In these circumstances, what is notable is a lack of agreement on this point and the fact that there was a failing somewhere. The then Senior Statutory Officers together with the then Executive Director of Place had both the experience and the position to understand their duty to brief Members and in not recording or escalating formally their concerns they have been left open to challenge on their actions.

In summary, 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.

In our view, key senior officers had the following responsibilities:

- The then Monitoring Officer (January 2016 to June 2021) had a responsibility to report on matters they believe to be illegal or amount to maladministration (Local Government and Housing Act 1989 section 5). In not ensuring that the external legal advice received in November 2016 was adhered to, the then Monitoring Officer's actions are open to challenge.
- The Section 151 Officer at that time (January 2015 to January 2019, at which point they moved into another role until March 2019) – under section 151 of the Local Government Act 1972, the Section 151 Officer is required to make arrangements for the proper administration of the Council's financial affairs and to have responsibility for those arrangements. Whether or not the then Section 151 Officer knew the loan documents were not properly executed, they had a duty to confirm appropriate documentation was in place before allowing the funding transactions to be authorized. The then Section 151 Officer also had a duty to escalate financial matters of concern to Cabinet which in our view included the project expenditure exceeding the budget approved by Cabinet. This duty also applied to the subsequent Section 151 Officer (February 2019 to February 2021) in respect of payments authorised from February 2019 although we accept the representations from the subsequent Section 151 Officer that as an ongoing project there was an assumption that appropriate arrangements were in place.
- The then Executive Director of Place was the project sponsor, chaired the Growth Board and the Fairfield Hall Board. Their objectives included
  - establishing 'new client side arrangements to hold Brick by Brick to account in the delivery of the business plan' and to 'oversee the opening of Fairfield Halls',
  - ensuring that their 'department understands and complies with corporate policy and accountability frameworks including those that relate to financial, people and procurement and commissioning processes and procedures'
  - being 'accountable for the robust management of the budget ensuring forecasting is accurate and take immediate action to deal with any unplanned pressures to deliver a balance budget'

In not ensuring the known project additional spend was reported to Cabinet formally they did not meet their objectives.

- The then Chief Executive Officer (June 2016 to September 2020) as Head of Paid Service has a duty to, where they consider it appropriate, to prepare a report on: (a) the manner in which the discharge by the authority of its different functions is co-ordinated; (b) the number and grades of staff required by the authority for the discharge of its functions; (c) the organisation of the authority's staff; and (d) the appointment and proper management of the authority's staff. (Local Government and Housing Act 1989 section 4). The Chief Executive Officer also had a

responsibility as Chief Executive to effectively manage senior officers reporting directly to them and to do so in line with the Council's Constitution.

In addition, in our view the relevant Portfolio Holders for each of these areas should have been aware of the escalating risks in a complex project (and representations received from relevant senior officers indicate that in their view concerns were raised to the relevant Portfolio Holders, although as noted we have not seen evidence of this, and this is disputed by the relevant Portfolio Holders). In representations made during the drafting of this report some Portfolio Holders have suggested that that the project was Brick by Brick's responsibility and not the Council's; in our view, this demonstrates a misunderstanding of the relationship between the parent entity and its wholly owned company structure (which as some respondents have acknowledged is very different to that with an external company) and the development licence option for the refurbishment which was pursued. It was a political priority. We consider the relevant Portfolio Holders at the time to be the Finance and Resources, Homes and Gateway Services and the Leader

The Council's key failures in the project were:

- receiving external legal advice in November 2016 that raised concerns over the possibility of challenge to the legality of the Council's approach to the project and failing to properly pass these legal concerns on to Cabinet or act upon that advice
- failing to ensure that legal documents were properly executed and retained
- not escalating the known delivery delays and escalating costs
- allowing the lack of transparency of reporting the known issues with the project in the Brick by Brick 2018/19 Business Plan to remain unchallenged
- allowing significant amounts of public money to be incurred on a scheme where the formal written legal documents had not been finalized.
- allowing significant additional expenditure beyond the original budget to remain unreported to Cabinet
- allowing the 2019/20 Brick by Brick's Business Plan to remain unchallenged when it was clear that the public version did not accurately reflect the facts known to the officers
- not responding to direct Member questions with the known project spend at that time in February 2020

As a last resort any of these individuals named above could, and in our view should, have raised their concerns directly with the Scrutiny and Overview Committee (which had sought assurances over the project) or the General Purposes and Audit Committee or the Head of Internal Audit or External Audit. The individuals could, and in our view should, also have used whistleblowing if they did not feel management or Portfolio Holders were acting appropriately.

The Council has responded to the previous reports (in the public interest published on 23 October 2020 and the PwC review of companies dated 13 November 2020) including reporting to Cabinet in November 2020, February, July and November 2021 on the actions taken to address governance concerns relating to Brick by Brick and other Council companies. In a report delivered on 18 October 2021, the Council announced that it had implemented 62 of the 99 recommendations from the first report in the public interest, and we are told that further progress has been made since; there has been significant turnover in the Council's senior officers and Portfolio Holders since the period this report covers.

In reaching our view on the legality of the arrangement we discussed with and challenged the current Senior Statutory Officers who reviewed the position. The Council has, in light of the matters reported upon here and their views as set out above, decided to account for the expenditure on the project as if it had been direct capital expenditure. The Council has proposed amendments to the draft 2019/20 financial statements that correct the accounting for this arrangement

We understand that the Council is now also in the process of considering alternative options with Brick by Brick, while in the meantime making other changes to the related governance arrangements.

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 (by the licence and proposed land transfer) 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.

## Appendix: Timeline

Date	Source	Fairfield Halls spend	Comment
Jun 2016	Cabinet paper	£30m	Initial Cabinet approval
Oct 2017	Scrutiny & Overview Committee		Minutes record: <i>Progress on the main contract had completed. Council is within original budget they set contractor</i>
Nov 2017	Fairfield Hall Board highlight report	£34.5m	Budget per monitoring reports with no explanation of variation from initial budget of £30m
Dec 2017	Brick by Brick Board report	£34.5m	Board report of forecast project spend including overall £10.5m loss on the wider College Green scheme
Feb 18	Cabinet paper – Brick by Brick Business Plan 2018/19 for shareholder approval	£30m	Officer report to Cabinet refers to Brick by Brick making profits and the £30m investment on Fairfield Halls  Business Plan refers to c£30m refurbishment on Fairfield Halls and no reference to the £34.5m budget in the monitoring reports
Feb 18	Fairfield Halls project monitoring report	£38.95m	Forecast project spend increased to £38.95m per monitoring reports
Jun 18	Fairfield Halls Board report	£42.8m	Forecast project spend increased to £42.8m per monitoring reports  Brick by Brick confirmed increase in spend in separate email to then Chief Executive who forwarded the email to the then Section 151 Officer
Sept 18	Fairfield Halls Board report and emails	£42.7m	Main works contract let in September 2018 at £42.7m
Oct 18	Letters between Brick by Brick and Council	£49.1m	Net spend on Fairfield Halls refurbishment identified as £49.1m  Total College Green projected loss of £28.8m
Oct 18	Brick by Brick Board report	£50m	Forecast project spend on Fairfield Halls refurbishment increased to £50m
Nov 18	Growth Board report	£15.89 m overspend	Reported project spend in excess of the budget included in monitoring report and no detailed explanation i.e., project spend was now £50.39m based on Budget £34.5m + overspend £15.89m
Dec 18	Scrutiny and Overview Committee		No commentary on the known additional spend in excess of the budget  Focus of presentation was progress of operator readiness for re-opening
Feb 19	Cabinet paper – Brick by Brick Business Plan 2019/20 for shareholder approval		Officer report to Cabinet has no commentary on Fairfield Halls project spend despite internal reports to the Growth Board showing a forecast spend of £50m which is in excess of the £30m investment approved by the June 2016 Cabinet.  Brick by Brick Business Plan reports £0m profit on College Green project. This includes the impact of the financial position on the Fairfield Halls project.
Jan 20	Scrutiny and Overview Committee	£42.6m	First reporting to formal meeting with members on Fairfield Halls refurbishment spend since approval in June 2016. Amount reported to members for spend on project was £42.6m
Mar 20	Financial ledger	£59.9m	Council record of funding provided to Brick by Brick for Fairfield Halls. No additional funding provided by the Council to Brick by Brick in January or February 2020.
Mar 21	Financial ledger	£67.5m	Total spend on Fairfield Halls

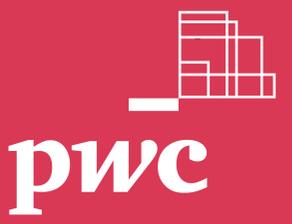


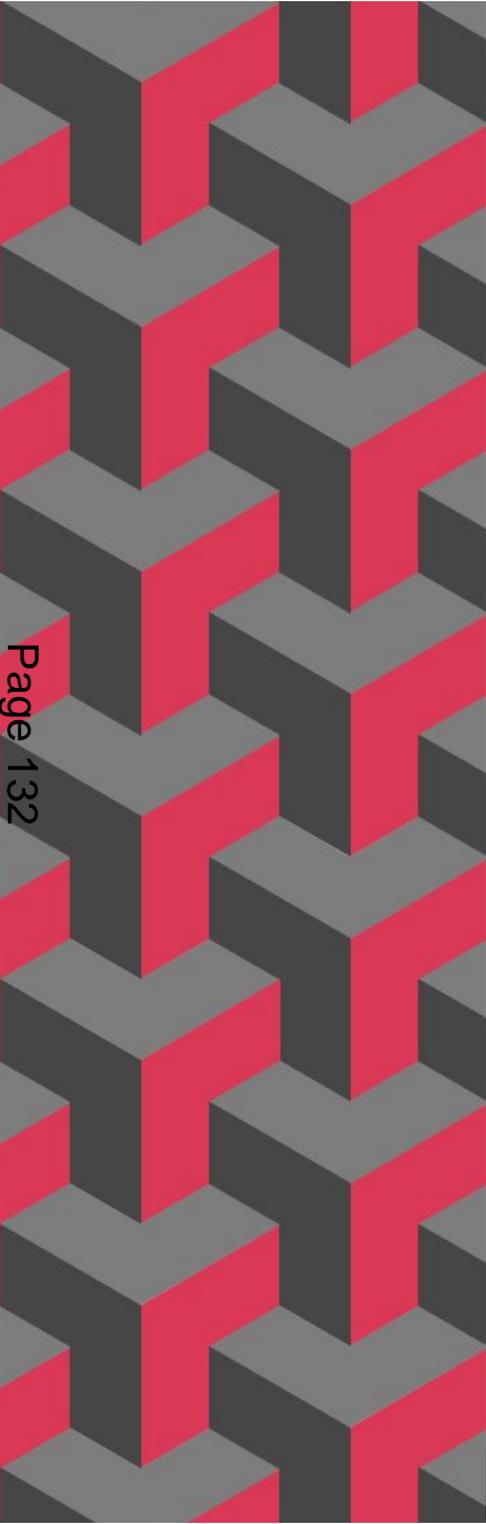
# London Borough of Croydon

Independent strategic review of Brick by Brick Croydon Ltd, Growth Zone, Croydon Affordable Homes LLP, the Revolving Investment Fund and the Asset Investment Fund

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13 November 2020





# Guidance

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We report on London Borough of Croydon Council (“LBC”) and its subsidiaries, Brick by Brick Ltd (“BBB”) and Croydon Affordable Homes LLP (“CAH”) (together, the “group”) in accordance with our engagement contract dated 5 October 2020.

This report has been prepared in connection with the purpose as stated in the engagement contract. This review was carried out for LBC only.

We draw your attention to important comments regarding the scope and process of our work, set out in the appendices.

Save as described in the agreement or as expressly agreed by us in writing, we accept no liability (including for negligence) to anyone else or for any other purpose in connection with this report, and it may not be provided to anyone else.

Yours faithfully

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# PwC scope and limitations of our work

## Scope of our work

The London Borough of Croydon Council (“LBC” / “the Council”) has engaged PwC to carry out an independent review of its property development related subsidiaries/funding vehicles (“the entities”).

The scope of our engagement specified that c.75% of time should be spent on the review of Brick by Brick Croydon Limited (“BBB”) with the balance spent on the remaining entities. Accordingly, the depth of analysis on BBB is greater than that delivered on Croydon Affordable Homes LLP (“CAH”); Growth Zone (“GZ”); the Revolving Investment Fund (“RIF”); or the Asset Investment Fund (“AIF”). We have taken a prioritised approach to this review given the finite amount of time and resource available.

### Key parts of our review work:

- Rapid financial and operational review of BBB;
- Strategic options review of BBB;
- Review of governance arrangements between LBC and BBB plus desktop review of governance arrangements with the other subsidiaries/funding vehicles;
- Current performance, Value for money and Governance arrangements of CAH, GZ, RIF and AIF.

Due to Government mandated Covid-19 travel restrictions, all meetings were held by video conference or telephone call with correspondence via email.

### Approach to our review

We have taken a prioritised approach to this review given the short timeframe (four weeks). Whilst information was provided quickly by LBC, some financial information from BBB took over two weeks to be provided, limiting our ability to undertake analysis.

We have carried out initial and follow-up reviews of documentation provided by BBB and LBC to build understanding of the BBB financial position and performance including detailed Board, committee and other working papers for FY19/20 and FY20/21, plus any other available and relevant supporting documentation (including governance structures, loan agreements and detailed development site reporting where available).

We held initial and follow-up interviews with the Board and key staff members of BBB as well as key Council personnel, to form a view on performance, operations, governance and strategic options.

A similar approach was adopted for the other entities within scope albeit on a reduced scale due to the agreed focus of review work toward BBB.

## Limitations in relation to our work

Our work commenced on 5 October 2020 with a first draft reporting deadline of 3 November 2020.

It was recognised that this short time frame of four weeks would require prioritisation of work, and that this would result in a high level of review across a large number of complex issues.

The full details required by the Council in respect to certain matters will require further work up, using information that has not been available to us during the course of our review.

In particular, in respect to BBB, delays in receiving information and the quality of information received have impacted the depth of review analysis we have been able to perform, in particular in relation to the current financial position and forecast performance of BBB.

Additional time would be required to refine the analysis, particularly regarding the strategic options available to the Council. Therefore the options set out should be considered indicative. We would recommend further work before a final decision is made by LBC on the future of its investments.

We also bring attention to the following:

- There are several examples of information provided not reconciling with information held by the Council (e.g. loan amounts and drawdown amounts) and we have had to work through these on a line by line basis to understand the correct current position;
- Audited FY19/20 accounts for BBB were outstanding during our review and accordingly we have based our analysis on the draft 2019/20 accounts provided to us by BBB;
- We have not conducted scenario modelling to assess the likely impact of COVID-19 or Brexit on the future performance of the entities or the Council's requirements.

# Brick by Brick - operational review

Section two

# 2a

# At a glance

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**1** LBC created BBB in FY15/16 to increase the quantity and quality of affordable housing available and deliver a positive contribution.

Against a backdrop of a nationwide shortage of social housing and affordable homes, with particular acuity felt in London, London Borough of Croydon (“LBC”) established a commercial subsidiary, Brick by Brick Croydon Limited (“BBB”) in FY15/16 to support an increase in the pace and quality of affordable housing being brought to market in the borough.

Delays in development timelines together with market uncertainty created by COVID and Brexit have impaired BBB’s performance against plan and resulted in significant delays to LBC’s return on investment.

BBB’s draft accounts for the year ended 31 March 2020 (FY19/20) suggest a small profit before tax against LBC’s cumulative lending of £199.5m and £14.4m of interest due.

LBC has proactively sought to gain a better understanding of the current and future performance of BBB and strategic options by commissioning this independent review of BBB.

**3** We have completed our work through a combination of interviews and review of documentary evidence.

Our independent review has been conducted through the following:

- Initial and follow-up review of documentation provided by BBB and LBC to build understanding of the BBB financial position and performance including detailed Board, committee and other working papers for FY19/20 and FY20/21 plus any other available and relevant supporting documentation (including governance structures, loan agreements and detailed development site reporting where available);
- Initial and follow-up interviews with the Board and key staff members of BBB as well as key Council personnel to form a view on performance, operations, governance and strategic options.
- Council and BBB staff have been supportive of this process however there have been delays and limitations to the information available, that have impeded the ability to meet the scope in the timeframe available.

**2** The depth of our work has been limited by unavailability of robust financial information from BBB. The lack of management accounts and a 13 week rolling cash flow is concerning.

- We have been asked to perform a rapid review of BBB finances, operations and governance and identify strategic options for LBC.
- Our review and analysis has been limited by the absence of BBB financial documents, such as up to date management accounts, forecast financial performance for the Company and a 13 week rolling cash flow. The business keeps a detailed summary of incoming and outgoing funds, but this does not give the Board, shareholders or lenders an up to date overview of Company performance, profitability or cash requirements. This lack of financial oversight is concerning.
- Our review has been limited by the time in which to conduct the fieldwork, analyse and prepare outputs. It was agreed with LBC that a prioritised approach should be taken. Further detailed work is required in a number of areas.

**4** BBB has significantly underperformed against the FY19/20 business plan.

- Since its inception in 2015, BBB has been entirely dependent on funding from LBC and to date (September 2020) has total borrowings of £214m, comprising loans of £199.5m plus interest payable of £14.4m.
- In its FY19/20 business case, BBB ambitiously stated an ambition to deliver c.500 residential units per annum, targeting the completion of 14 sites already in development (307 units). Planned sales of £132.3m and a profit of £10.3m (7.8%) should have allowed the commencement of repayment of debt to LBC. No interest or loan capital was repaid to LBC in FY19/20.
- BBB attributes this to a number of factors including delays due to COVID, development issues and delays with actions sat with Council departments (such as Planning). We believe COVID was a relatively minor causal factor given the year ended on 31 March 2020. We note there is no reference to a FY19/20 impact in BBB’s March or April Board minutes.

# At a glance

Page 138

5

BBB's governance requires significant strengthening at Board level with a need for substantially improved financial oversight. LBC also needs to enhance oversight of BBB.

- BBB's governance structure and practices require significant improvement. In particular there is a need for greater financial stewardship and assurance to both the Board and its shareholder (LBC).
- The Board lacks a qualified Finance Director. In addition, the business' in-year financial reporting processes have significant gaps and must improve substantially.
- The appointment of a suitably qualified Director of Finance to strengthen the Board is essential. BBB should prepare monthly management accounts including both year to date overall performance versus plan and forecast outturn for the year, with narrative against any variance. This will provide increased Board oversight of BBB's financial performance and allow it to provide greater assurance to its shareholder and lender, LBC.
- LBC's shareholder oversight of BBB must improve. We recommend rapid appointment of suitable LBC representatives to the BBB Shareholder and Investment Board.

7

Land transfers have been conducted in a way which appears to be s123 compliant, but the method used has been inconsistent.

- The Council has sought to comply with obligations under s123 of the Local Government Act 1972 in relation to best consideration for any land which transfers to BBB. However, there are inconsistencies and differences in the approach that the Council and BBB have used in valuing the land, and where there are material valuation differences these should be better understood and resolved;
- There has been no previous formal documentation or agreement on the 'high' value of affordable housing units to be acquired from BBB which underpinned the valuation BBB has ascribed to the land acquired from the Council;
- The Council and BBB should ensure that all commercial arrangements between them are comprehensively documented going forward.

6

BBB's loan portfolio has not been properly managed by LBC or BBB, and several of the Company's loans are technically in default as a result.

- BBB and LBC put in place loan agreements which cover the lending against specific developments. We have had sight of 30 of these documents.
- In many of the documents we have reviewed, the loans have breached their final repayment dates, and as a result BBB is technically in default on those loans. This is despite the fact that BBB continues to request further drawdowns against the loans.
- We understand that the loans were treated as extended by virtue of discussion of BBB's business plans but have seen no documentary evidence of Board or Cabinet discussions in this respect. This has resulted in loans not defaulting, due to an informal renegotiation apparently endorsed by LBC's lack of action in this respect.
- The loan drawdown process has not operated as stipulated in the loan agreements. The appropriate controls have not been applied by LBC to the LBC lending to the Company.

8

BBB's ambitious strategy of developing large numbers of small, complex and more risky sites has led to significant delays. This strategy has put LBC's investment at risk.

The 2016 Cabinet proposal for the establishment of BBB included the following:

1. Maximise the use of the Council's assets to deliver new homes;
2. Enable an innovative commercial model which will benefit the Council financially and help meet savings targets;
3. Bring forward the development of key sites across the borough;
4. Secure improved community facilities.

As of October 2020, the delays in bringing new homes to the market has put the Council at serious financial risk and resulted in only a handful of new homes being available. As a consequence, savings have not been made. The severity of this situation has not been exposed until late in 2020, as the formal controls that should have been in place were absent.

# At a glance

## 9 Next steps

- As BBB's sole funder, LBC has a number of options in respect to how to address this situation and maximise potential value from BBB. We have set these out for LBC in section 2b.
- Irrespective of the options, LBC should:
  - Review the governance and management of BBB, tightening controls around loan funding in particular;
  - Improve capacity and capability of the teams that interact with BBB on a daily basis including in finance and planning;
  - Require BBB to improve its financial oversight by producing a 13 week rolling cash flow forecast and integrated forecast profit & loss and balance sheet statements; and
  - Require BBB to appoint a sufficiently qualified Director of Finance.

# Brick by Brick - Strategic options

Section two

# 2b

# At a glance: Options available to the Council regarding BBB

Page 141

## 1 We have set out what we consider to be the options available to the Council at this point in time.

- We have used the available information to assess the options in respect to BBB, taking into account:
  - The likely costs and potential revenue from BBB’s development activities;
  - Further funding required (noting that LBC’s financial position is extremely challenged);
  - The status of BBB’s developments, and known problem areas;
  - The potential impact on LBC’s loan funding to BBB, and interest accrued;
  - The impact of insolvency on BBB’s assets;
  - The likely challenges in implementing the options;
  - The likely time requirement to deliver the options.

## 3 The options that present the best financial outcomes for the Council are continuing to trade: Limited build out or build out tranche 1 and some of 2.

- We believe, based on the available information and our discussions to date, that continuing to trade the business while further examining build out or sales options but they do require continued investment in BBB before a cash return is generated.
- Please note that our ability to assess the future costs, future sales and impact on the assets values has been extremely limited. LBC should undertake further work in respect to the detail on these options.
- All of the options result in the Council writing off substantial loan funding and accrued interest.

## 2 Seven options are available to the Council under three categories: Close, Continue to trade or Sell

- We have assessed the options available to LBC having considered the available limited information, and have classified seven options under three categories:



## 4 There is a significant amount of detailed work still to do, to firm up the options, the financial impact of each and their viability

- At this time, we do not believe BBB’s information (i.e. lack of company level financial forecasts) is robust enough for the Council to make a strategic decision in respect of these options.
- As a result, the following actions should be immediately taken, to ensure that the Council is able to make a fully informed decision about the best option to select:
  - The appointment of a Director of Finance;
  - The rapid work up of robust BBB financial (P&L) forecasts; and
  - Further asset review work to test asset values.

# Growth Zone - review

Section four

3

# At a glance

Page 143

## 1 Growth Zone is LBC's funding vehicle for investment regeneration in Croydon and is set up to retain and invest business rate increases.

Growth Zone was set up to provide LBC with a vehicle to coordinate its regeneration funding. The original business plan included £309m of Council and £209m of partner funding (GLA, TfL and others) and was predicated on the building of a Westfield retail centre in Croydon.

- Since the submission of the final business model in 2018 the economic climate has changed substantially and the planned scope has been greatly reduced.
- An original £167.8m of approved spend was reduced to £78m by LBC in February 2020, with FY20/21 planned spend reduced from an initial £21m to £6.7m.
- Of an initial 100 projects, 35 are paused and 15 have been stopped.

## 3 The impact of COVID-19 on the Council and its partners presents a significant risk to fund planned investments and a future business rates receipts on which the model relies.

- There is a significant risk that the parties involved in GZ will have a reduced scope to invest in the near future given the competing demands and costs of the COVID-19 response to date and the potential reduction in forecast business rate increases on which GZ is reliant for future investment.
- Furthermore any increase in lockdown measures may adversely impacted existing project timescales and/or increase the costs of delivery.
- We recommend that LBC continues to communicate clearly with its GZ partners and seeks assurance from each on the forecast ability to fund existing projects to support its own investment decisions and before committing to fund any projects that have not yet commenced.
- A revised business case is recommended to adequately reflect changes in current and future population behaviours and requirements. This should come back to the LBC's cabinet in light of the severity of the cash issue in LBC.

## 2 Given the ongoing COVID-19 pandemic and economic uncertainty, reducing planned funding in FY20/21 to £6.7m was a sensible step as the original business plan is no longer fit for purpose and requires revision.

- Further to the case by case COVID-19 review undertaken by LBC that resulted in the pausing of 35 projects and the cessation of 15, we recommend a project by project review of the remaining 47 projects be made to assess the return on investment (financial and non-financial) be undertaken to ensure further investment still delivers value.
- This review should also consider if the £6.7m currently forecast in FY20/21 should continue. We understand LBC are in the process of reviewing this.
- Reappraisal may enable LBC to pause further investment. However, we would not recommend closing down the GZ programme as this provides LBC with a vehicle to focus any recovery investment required of it and (dependent on central government policy) does provide LBC with the ability to use Business rates that it may otherwise have to return to central government.

## 4 Governance structures appear reasonable but the frequency of meetings with partners may need to increase to provide more assurance to LBC in the current climate.

- The monthly suite of meetings including the GZ Steering committee and subgroups seems appropriate in terms of membership and frequency, but the frequency of meetings with key stakeholders may need to increase in particular with GLA given current uncertainty.
- Processes for risk assessment of ongoing projects gives a means of exception reporting but should be completed consistently in order to give a complete picture.

# At a glance

5

There are a number of key next steps LBC should consider in relation to Growth Zone

Given the current economic uncertainty, the steps the Council have taken to review and revise down the ambitious investment plan for Growth Zone are sensible.

There will be a continuing need for some investment in Croydon, particularly in light of the need to generate growth after the pandemic, and so switching off all planned investment would be unwise.

Any subsequent increase in planned investment should be supported by a business case and taken through robust governance and sign off processes for full scrutiny.

# Croydon Affordable Homes LLP - review

Section five

4

# At a glance

**1** The LLPs were created as commercial entities to provide affordable housing and generate a positive contribution to the LBC general fund of £1.4m per annum.

- The LLPs are jointly owned by LBC (10%) and Croydon Affordable Housing LLP (90%) which is a registered charity.
- They currently lease 344 properties (248 in CAT and 96 in CAH) from the Council on 80 year leases with a 40 year Council break clause. These properties were purchased through sale and lease back to two funders.
- The LLPs' structure has enabled LBC to utilise right to buy receipts previously not permitted through the housing revenue account allowing investment in Croydon Borough rather than releasing these funds to central government.
- The transfer of assets to LBC's Pension Fund is outside of our review, however we note that the Council is planning to transfer the properties to LBC's pension fund at the 40 year lease break clause to reduce the annual LBC pension contributions.

**3** The life cycle costs of maintenance and repair do not appear to be reserved for in the LBC accounts. This must be addressed and may create an additional increasing annual liability.

- We understand that reserves for life cycle costs for the leased properties are currently not being made in the accounts of LBC. We understand that legal advice suggests the LLPs cannot make the provision in their own accounts.
- We note that the model used for CAH's development included average lifecycle costs of c.£1.4k per property per annum based on 8% of rental income. RICS life cycle costing guidance suggests that provision should be made of c.3% of the asset value per annum. The CAH approach is significantly lower than this but we note that 3% of asset value may be excessive for affordable housing and a tailored approach may be required.
- Immediate steps should be taken by LBC and CAH to assure the Board and Cabinet that suitable provisions for life cycle costs are being made. The amount not reserved may need to be backdated.
- This is particularly important given the planned transfer of the benefit of the properties to LBC's pension fund and reliance on the future rental revenues.

**2** The LLPs' latest financial statements were not available for review, but the FY19/20 forecast outturn was £317k (68% behind target) behind plan, due to bad debts and voids.

- Detailed financial information regarding the group's financial performance in 2019/20 was not available, nor was any record of FY20/21 financial performance in the year to date. We understand that 2019/20 accounts are currently with the external auditors but have not received these. This is a clear shortcoming in the LLP's financial monitoring and governance, given the value and significance of the assets held.
- The forecast outturn as at Q3 FY19/20 indicated the LLPs expected to deliver a combined surplus in 2019/20 of £148k against a budget of £465k. This shortfall in performance was attributed to higher than budgeted voids in CAH (12% in year, reducing income by £108k and a growing bad debt provision in CAT (£127k over budget). Lettings management performance may also be a factor.
- We note that in Q4 a further 81 homes were transferred but these would not be reflected in the Q3 figures.

**4** The governance arrangements of the CAH LLPs require significant strengthening, as they have been run with insufficient financial oversight.

- Our desktop review of Board and other papers plus interviews with CAH personnel suggests that the quality of financial reporting internally and externally needs to improve. Board papers suggest the last detailed financial update was in February 2020 (in the previous financial year) but only gave a forecast outturn and there is no evidence of the Board receiving a final 2019/20 position or update on FY20/21 trading performance.
- LBC's holding company was dissolved as Companies House filing deadlines were not met. We understand this position is being addressed by LBC, but indicates a need to significantly improve corporate governance and administration.
- We recommend LBC puts in place robust governance around the LLPs given the value of the assets held, with dedicated team resource aligned to the funding that the LLPs provide.

# At a glance

5

CAH and CAT have partially met their purpose of increasing affordable housing available to Croydon residents, however we understand there is an ongoing mismatch of tenants to appropriate properties, resulting in the increase in rent arrears.

- We note that whilst the LLPs have increased the affordable housing available to Croydon residents, they are not forecast to deliver the surplus in line with business plans.
- If the 2019/20 Q3 forecast outturn was accurate, small cost increases or reductions in rental income would result in a failure to breakeven. This would trigger a waterfall payments model that may result in the Council not receiving its full management fee. The Council's overall position would be exacerbated by the need to increase lifecycle reserves.
- Properties are not generating rents in line with plan and costs of chasing rent arrears and increasing bad debt provision are driving financial underperformance.
- Better matching of tenants to appropriate properties is required if the LLP model is to deliver returns in line with the business plan.

6

The operational and business model for the CAH group of LLPs requires detailed review before further investment is made by LBC, and dedicated oversight of the LLPs should be established.

- Before LBC invests any further funds in properties via the CAH LLPs, it should undertake a detailed review of the businesses to ensure:
  - The full future cost of the properties is understood and accounted for appropriately, including lifecycle reserves.
  - There is a clearly understood cash impact for LBC in terms of forecast flow of funds from the LLPs.
  - There is a clear strategy on the use of homes in terms of tenant type and affordability.
  - The quality of financial reporting LBC receives from the LLPs improves, so that LBC has a detailed monthly phased financial plan at the start of each year with monthly progress reports against this at an income and expenditure level, with variance analysis and narrative plus a revised forecast outturn for the year.

# Revolving investment fund - review

Section six

5

# At a glance

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**1** The RIF was set up in 2014 to increase the amount of funding available to drive growth. Loans totalling £269.7m have been provided through the RIF, mainly to BBB. Many are in default.

- The RIF was set up with Cabinet approval on 29 September 2014, to accelerate the provision of homes, fund development projects, drive growth and sustainable employment opportunities. The RIF was explicitly intended to deliver capital and revenue returns for the Council.
- Since inception, RIF has provided loans totalling £269.7m to Council initiatives and subsidiary companies owned by LBC.
- The main areas of lending are to BBB (£208.8m\*), Real letting property investments - relating to a management property fund providing housing to homeless individuals (£45m), and CAH (£8.4m).
- As at July 2020, the outstanding balances against loans, including accrued interest, provided through the RIF totalled £269.7m.
- No BBB loans have been repaid as a consequence of the lending, in direct contravention of multiple loan agreements which are technically in default.

**3** Governance around the Loans provided has been informal and is not in line with the plan agreed by Cabinet, or best practice.

- The RIF fund was intended to be ring-fenced and have clear governance and decision making. Neither of these stated intentions have been put into place.
- There is no robust treasury plan for management of these loans, or set of standard operating procedures in relation to the management of RIF loans and loan management is not in keeping with industry best practice in relation to management of loans of this size.
- Changes in personnel have left a lack of corporate memory in relation to the RIF loans. It has been particularly challenging to locate copies of loan documentation for the purposes of this review.
- Management of the RIF's loan book has been left to the LBC finance team, but up until mid-October 2020 there was no individual within LBC who had current active oversight of the RIF loan portfolio.

\* Note: £208.8m as at July 2020. Total funding as at 30 September is £214m.

**2** A limit of £272.2m was placed on lending by RIF in the 2018-22 Medium Term Financial Strategy. The RIF has loaned £17.5m more to date than budgeted, in contravention of the Strategy.

- The 2018/22 Medium Term Financial Strategy (“MTFS”) noted that total RIF borrowing from 2018 to 2022 would be £272.2m.
- However, the scale of the funding through the RIF suggests that no cap has been exercised on the funding that the RIF has provided per annum to the extent that in FY20/21 the RIF can currently only lend a further £2.5m before reaching the £272.2m limit stated in the MTFS.
- Since there was an expectation that funding provided would revolve back from BBB to the Council to reinvest, there may have been an expectation that funding would not become excessive. However since the majority of funding to date (£208.8m to BBB\*) has not delivered returns, any further investment represents an increased borrowing requirement for the Council.

**4** RIF lending is currently invested in 23 development projects, several of which are not performing as planned.

- Key investments are not performing as intended. Indeed, many BBB loans are overdue with no evidence of having been renegotiated or interest paid to date.
- The risk profile of the RIF loan book is therefore much higher than planned.
- The RIF has not been revolving, because very few of the loans have repaid with £208.8m\* tied up in BBB loans with no interest received to date.
- The Council has not operated a balanced lending approach in contradiction to the careful analysis set out in the 2018 MTFS paper, with the majority on RIF investment focused on residential development.

# Asset Investment Fund (“AIF”) - review

Section six

6

# At a glance

1

The AIF was set up in 2018 as part of LBC's investment strategy, to fund non-residential property investments. LBC has made investments of £98.8m through the AIF.

- The AIS was designed to group Council investments in commercial property as a vehicle to deliver revenue returns. The fund created is referred to as the Asset Investment Fund ("AIF") and was capped at £100m. The purchase of Croydon Park Hotel ("CPH") at £31.3m was completed before the AIF's inception but is accounted for in the AIF, bringing the fund limit to £131.3m.
- Based on the latest LBC documentation, the AIF has spent £98.8m on £93.5m of assets plus £4.9m of purchase costs, funded through general LBC borrowing.
- Assets purchased (including purchase costs) are: Croydon Park Hotel (£31.3m), Colonnades phases 1 & 2 (£53.5m), 60 Vulcan way (£7.4m); and 37-39 Imperial Way (£6.6m.)

3

Croydon Park Hotel and the Colonnade leisure and retail park both present significant financial risks to LBC that need to be addressed.

- The closure of CPH creates a £1.7m shortfall in FY20/21 rent receipts and exposes the Council to unbudgeted costs for the vacant property including maintenance, repairs, security and insurance.
- LBC currently estimates CPH is worth less than the purchase price. The asset should be appropriately impaired following external valuation, with the corresponding impact reflected in the income and expenditure statement.
- To mitigate this LBC are in the process of assessing alternative uses for the site with a view to generating income and currently expect to retain the property until the market recovers. This process should be prioritised.
- The Colonnades leisure & retail park has a number of tenants that have and will continue to be impacted by COVID-19 restrictions. Rents have underperformed and there is further risk of rent default. LBC should monitor this investment closely and plan for a downside scenario on rent receipts.
- The forecast net return on investment may be overstated by up to £0.6m as described in point 2. LBC should review and agree on the appropriate rate at which the AIF interest is calculated.

2

LBC is forecasting significant AIF underperformance in FY20/21, with a £82k forecast net return against a budget of c.£2.4m. We think the actual return could be a loss of £(0.5m).

- The AIF is forecast to deliver a £82k net return to the Council in FY20/21 against a FY20/21 budget net return of c.£2.4m. The target return based on 2% of total investment of £131.3m is £2.6m.
- Forecast underperformance is driven by two key factors:
  - Croydon Park Hotel ("CPH"). This was expected to deliver rents of £1.7m p.a. but the tenant trading company went into administration in June 2020 in part due to COVID-19 trading pressures with no rent expected in FY20/21.
  - Colonnades leisure & retail park - COVID-19 restrictions have impacted several tenants, leading to rent deferrals and reduced interest in vacant slots, all reducing in year rent receipts.
- The forecast net return of £82k is predicated on an assumed 2.44% rate of interest on borrowing. The current average borrowing rate for LBC is 3.15% which equates to an additional c.£0.6m cost per annum. Adjusting the forecast £82k net return for this additional interest cost would result in a net loss to LBC of c.£0.5m.

4

The monitoring and governance of AIF investments is very limited, and should be strengthened with clear Cabinet scrutiny.

- The process by which assets were acquired is clearly documented and followed LBC policy in terms of formal notices, recorded decisions and supporting documentation.
- The timeframes around making offers for the assets were short and delegated authority was used to make offers, but the commercial rationale behind this was documented.
- However, ongoing monitoring of the AIF portfolio and governance is very limited. AIF performance is not discussed at any formal board, with reporting confined to within the Asset and Estates team and Place directorate. AIF is covered by general financial monitoring on a monthly (previously quarterly) basis.
- The current underperformance of investments, in part due to COVID-19, underlines the importance of the AIF receiving suitable and regular executive oversight. Given the issues regarding Croydon Park Hotel and the need to quickly address these, we recommend higher levels of Cabinet scrutiny going forward.

5

The Council will need to make a strategic decision on the future of the AIF, considering current financial pressures vs long term investment. Immediate sales are likely to reduce value achieved.

- Given the the Council's financial pressures and the current economic uncertainty in the UK due to COVID-19, we agree with the decision to not pursue any further investment in the AIF.
- Making strategic decisions on asset realisation at a time of uncertainty may impact value and therefore disposals in the immediate term are currently unlikely to realise best value.
- We believe the best course of action at present is to seek to maximise returns on the existing investments and undertake annual strategic reviews of the AIF to assess if/when disposals will result in best value.
- However, if LBC needs to release cash to mitigate financial pressures in year, the AIF does represent significant potential for unlocking cash.

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# Recommendations and next steps

Section six

7

# Key observations and recommendations

## Priority

The actions have been given a 'Priority' rating from high to low. This reflects the degree of urgency with which we believe the actions should be addressed.

High

This is critical to progress.

Medium

This is important to progress.

Low

This is least important to progress.

## Ease of implementation

The 'Ease of implementation' rating in the final column indicates the level of difficulty of implementation, taking into account any work already undertaken

R

Hardest to implement in the available time period.

A

Can be implemented in short to medium term.

G

Easiest to implement in the available time period.

# Key observations and recommendations

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Ref.	Area	Observation and action	Responsible Organisation	Priority (High / Med / Low)	Ease of implementation (Red / Amber / Green)
1	BBB - Financial planning	The Company does not currently produce a consolidated phased plan against which to assess year to date financial performance, nor does it produce consolidated forecasts in terms of cash flow, profit and loss or financial position. We recommend that BBB should improve its financial oversight by producing: A 13 week rolling cash flow forecast; and integrated forecast profit and loss and balance sheet statements.	BBB	High	
2	BBB - Financial governance	There is currently no financially qualified member of the Board to provide challenge to BBB's reported performance or forecasts. BBB should ensure that there is a sufficiently qualified Director of Finance in post to increase the internal financial scrutiny and challenge and support the Shareholder Board to improve its understanding of the business's finances.	BBB	High	
3	BBB - Financial Governance - reporting	BBB does not currently have any integrated company-wide financial monitoring or forecast and therefore it is challenging for the Board to make effective decisions on the basis of Company financial performance. Whilst we understand there is an ambition to produce monthly management accounts moving forward, BBB should integrate development, sales and financial projections into a monthly reporting cycle to provide visibility to the Board on the Company's financial position.	BBB	High	
4	BBB - Financial Governance	There is a lack of financial capacity and capability within BBB. In addition to the appointment of a qualified Director of Finance we expect there to be at least one additional suitably qualified member of staff who can support the development of robust financial information to proactively manage the BBB business.	BBB	High	
5	BBB - State aid	Improve documentation of arrangements for the subsequent sale of assets by BBB, particularly where this has a direct influence on the valuation of land to be acquired / transferred.	LBC	Med	

# Key observations and recommendations

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Ref.	Area	Observation and action	Responsible Organisation	Priority (High / Med / Low)	Ease of implementation (Red / Amber / Green)
6	LBC - Purchase of BBB properties	<p>The Cabinet has approved in July the further purchase of 231 BBB properties, but has not yet entered into contract for any of these. We understand that the status of these property purchases is pending, subject to review. The Council will need to decision on a site by site basis whether to pursue this option and notify BBB accordingly immediately prior to the practical completion of the schemes.</p> <p>LBC should review the proposed purchases of these properties in light of current market conditions, so that it does not exceed these thus exposing the Council to risk under S123.</p>	LBC	High	
7	LBC - BBB developments	<p>LBC has not created sufficient capacity in its own teams (such as planning) to allow for the increased demand for services that its drive to create affordable homes is generating. There is evidence that some of the delays experienced on BBB development sites are being driven by longer than normal process time in the Council's operational teams. Since the Council must avoid preferential treatment to BBB, it may wish to consider general additional capacity in these teams to support quicker processing across the board. This will support quicker resolution for all developer delays including BBB.</p>	LBC	High	
8	LBC - BBB - State aid	<p>The Council should regularly review the financing and operational arrangements of BBB for ongoing compliance with State Aid requirements, particularly in the context of:</p> <ul style="list-style-type: none"> <li>• Maintaining a state aid compliant capital structure including the equity loan debt model</li> <li>• Pricing loans on a state aid compliant basis which reflect the risk associated with investing in BBB specifically.</li> </ul>	LBC	High	

# Key observations and recommendations

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Ref.	Area	Observation and action	Responsible Organisation	Priority (High / Med / Low)	Ease of implementation (Red / Amber / Green)
9	LBC - Governance	There are significant concerns around the adherence to governance procedures within LBC and its subsidiaries. LBC should consider commissioning a wider and thorough governance review of the organisation.	LBC	High	
10	LBC - Governance	There is insufficient capacity within the LBC corporate governance team to appropriately oversee the application of governance across the organisation. LBC should review its governance team structure and ensure it has the required level of capacity and capability along with senior input to ensure best practice governance procedures are adhered to.	LBC	High	
11	LBC - Governance	It has proven difficult to obtain a complete set of documentation in relation to loans and other agreements between LBC and its subsidiaries. LBC should ensure that it collates and maintains a complete central repository of all commercial arrangements between itself and its subsidiaries,	LBC	Med	
12	LBC - Governance	Given the level of risk associated with BBB, the Council should consider reviewing the BBB risk entry on the central risk register and reflect the risk outside of general governance matters.	LBC	Med	
13	LBC - Disposals	Where analysis and calculations are undertaken with regard the allocation of negative land value across sites, greater levels of clarity and explanation as to the process undertaken should be developed and retained for future audit trail purposes.	LBC	Med	
14	LBC - Disposals	Consider the greater use of third party external valuers for all future site disposals, transfers or acquisitions.	LBC	Med	
15	LBC - Disposals	Maintain an audit trail or log of key assumptions employed in developing valuations and analyses related to land transfers, disposals and acquisitions, particularly where this is performed in house (external valuers typically provide detailed reports on valuation, including assumptions employed).	LBC	Med	

# Key observations and recommendations

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Ref.	Area	Observation and action	Responsible Organisation	Priority (High / Med / Low)	Ease of implementation (Red / Amber / Green)
16	GZ - Business case	<p>The assumptions on which the original business case was based (forecast business rates increases and the development of a Westfield retail complex) are no longer valid and the business case should be revised.</p> <p>This should be done building on the COVID-19 impact review already completed and must consider the change in the economic forecast for the duration of the proposed investment period and the changes in the requirements of Croydon's population and behaviours following COVID-19 and any associated downturn.</p>	LBC	High	A
17	GZ - Governance	<p>Annual and quarterly review meetings with GLA and the Mayor of London's office: Frequency of governance meetings with stakeholders may not be sufficient in light of ongoing economic uncertainty.</p> <p>LBC may wish to consider increasing frequency until such time as a revised GZ business plan is agreed including the underpinning assumptions over funding - i.e. business rate increases and the Councils ongoing ability to utilise these.</p>	LBC	High	A
18	GZ - Governance	<p>Any subsequent increase in planned investment should be supported by a business case and taken through robust governance and sign off processes for full scrutiny.</p>	LBC	Low	A

# Key observations and recommendations

Ref.	Area	Observation and action	Responsible Organisation	Priority (High / Med / Low)	Ease of implementation (Red / Amber / Green)
19	RIF	The RIF fund was intended to be ring-fenced and have clear governance and decision making. Neither of these stated intentions have been put into place. Cabinet should urgently revisit the purpose of the RIF fund, and set clear lending controls with well enforced drawdown requirements to prevent any further loss of control.	LBC	High	
20	RIF	Management of the RIF's loan book has been left to the LBC finance team, but up until mid-October 2020 there was no individual within LBC who had current active oversight of the RIF loan portfolio. Changes in personnel have left a lack of corporate memory in relation to the RIF loans. It has been particularly challenging to locate copies of loan documentation for the purposes of this review.  Loan documents should all be properly archived and filed so that they can be easily located. An automated reminder and alert system should be established so that Loans are properly managed.	LBC	High	
21	RIF	There is no robust treasury plan for management of these loans, or set of standard operating procedures in relation to the management of RIF loans and loan management is not in keeping with industry best practice in relation to management of loans of this size.  A robust set of operating procedures should now be put into place with immediate effect.	LBC	High	

# Key observations and recommendations

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Ref.	Area	Observation and action	Responsible Organisation	Priority (High / Med / Low)	Ease of implementation (Red / Amber / Green)
22	CAH - Life cycle cost provision	We understand that there should be a provision in the LBC accounts for the life cycle costs of the lease properties managed by the CAH group of LLPs. There is no evidence that this provision exists suggesting there is a risk that the true future costs of the leases through to the planned transfers to the Pension Scheme are not recognised. CAH should recognise a liability in their accounts to address this, and funds should be ring fenced to reflect this future cost.	CAH	High	
23	CAH - State aid	A more consistent approach to agreeing land value between the Council and its wholly owned subsidiary: It does not appear to be logical for the two related entities to have materially different views on land valuation.	LBC	Med	
24	CAH	There is a lack of clarity on whether or not life cycle costs are being appropriately recognised. Immediate steps should be taken by LBC and CAH to assure the Board and Cabinet that suitable provisions for life cycle costs are being made. The amount not reserved may need to be backdated.	LBC	High	
25	CAH	We recommend LBC puts in place robust governance around CAH given the value of the assets held, with dedicated team resource including a company secretary function to oversee general CAH LLP group companies house filing and require improved financial reporting from the LLPs.	LBC	Med	
26	CAH	LBC should formulate a clear strategy on the use of homes in terms of tenant type to understand the impact of suggested rent levels and the ability to pay these.	LBC	Med	

# Key observations and recommendations

Ref.	Area	Observation and action	Responsible Organisation	Priority (High / Med / Low)	Ease of implementation (Red / Amber / Green)
27	AIF	<p>Monitoring of the AIF portfolio and governance is very limited. AIF performance is not discussed at any formal board, with reporting confined to within the Asset and Estates team and Place directorate. AIF is covered by general financial monitoring on a monthly (previously quarterly) basis.</p> <p>The governance of AIF should be formalised with a clear regular review with reports to Cabinet on status.</p>	LBC	Med	
28	AIF	<p>Making strategic decisions on asset realisation at a time of uncertainty may impact value and therefore disposals in the immediate term are currently unlikely to realise best value.</p> <p>We believe the best course of action at present is to seek to maximise returns on the existing investments and undertake annual strategic reviews of the AIF to assess if/when disposals will result in best value.</p>	LBC	Med	
29	AIF	<p>If LBC needs to release cash to mitigate financial pressures in year, the AIF does represent significant potential for unlocking cash.</p> <p>Assess if there is a need for cash. If there is, then undertake a more detailed review of each asset for suitability to meet this need. This could include a detailed valuation exercise.</p>	LBC	High	

# Appendices

## Section eight

# 8

# Scope and process

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Scope	Process
<b>Purpose</b>	The report was produced for LBC only and is a confidential document.
<b>Access to management</b>	In general, we have had reasonable access to LBC staff and directors, the Board and staff of BBB, personnel linked to the CAH group, RIF and AIF.
<b>Management representation</b>	We have shown sections of this draft report (excluding section 3 - strategic options), plus supporting appendices to: BBB's CEO (sections related to BBB), the former LBC Section 151 officer (historical pages only); a Trustee of CAH LLP and the Head of Asset Management and Estates (the AIF and RIF sections). They have confirmed that, to the best of their knowledge and belief, the report does not contain any material error of fact, there has been no material omission and it fairly sets out the recent results, state of affairs and (where relevant prospects of the subjects of this review. To the extent that we consider appropriate, we have incorporated their comments in this report.
<b>Access to information</b>	Our work has comprised a review and analysis of the financial and other information provided to us by LBC, BBB, the Trustee of Croydon Affordable Housing LLP and other individuals, plus discussions with individuals related to each of the entities that form the subject of our report. We have assumed that this information and management's explanations and representations are complete, accurate and reliable. The quality and availability of financial information available from BBB has impacted the level of detail we have been able to provide in our strategic options analysis. Further work would be required to deliver more detailed modelling of the proposed options.
<b>Clarity of information</b>	The information provided to us, together with our access to management, has allowed us to gain insight and understanding into some of the more significant risks, trends and issues faced by each of the entities.
<b>Review process</b>	Our work was performed over a 4 week period commencing 5 October 2020. We had access to LBC officers. We also had access to the CEO, BBB and the BBB senior management team and other staff.
<b>Exclusions from scope</b>	LBC should consider our recommendations in the light of its own assessment of the security position. We point out that the scope of our work did not include a detailed review of the Croydon Housing market BBBs competitive position in this markets. Furthermore, our work did not include a review of any of the entities tax affairs or its pension arrangements.
<b>Financial projections and short-term cash flow forecast: Prospective Financial Information ("PFI")</b>	Any underlying PFI referred to in this report was not prepared or developed by us and we have not restated any PFI or made assumptions or projections relating to PFI. Management has full responsibility for the judgements involved in, and results of, its PFI preparation processes. While we may have performed sensitivity analyses on PFI and underlying assumptions, any tables aggregating our comments or observations of vulnerabilities and sensitivities do not represent restatements of or revisions to PFI; they are only a summary of our analysis to assist you with your evaluation of PFI. It is your responsibility to consider our analysis and make your own decisions. As events and circumstances frequently do not occur as expected, there may be material differences between PFI and actual results and cash flows. See also our comment below re BREXIT. We take no responsibility for the achievement of predicted results.
<b>BREXIT</b>	Given the UK referendum result and the subsequent triggering of Article 50 there is uncertainty, which could persist for some time, as to what this may mean for businesses, whether in the UK or outside it but with trading or other connections with the UK. As a result, our work may not have identified, or reliably quantified the impact of, all such uncertainties and implications.
<b>COVID-19</b>	It is not possible for LBC, its subsidiaries or us to assess with any certainty the implications of COVID-19, either in terms of how long the current crisis may continue or in terms of its impact, potential or actual, on LBC or subsidiary business. For example, BBB may face significant supply issues if its supply chain includes entities in regions where the authorities have implemented, or may implement, measures to contain and/or prevent the spread of COVID-19. Similarly, demand for products and services may be significantly impacted. BBB has modified its projections to try and show a possible outcome. It has not considered the potential impact on balance sheet items (such as impairment to assets (such as fixed assets, investments, inventory, receivables), or liabilities and provisions (including potential claims)). BBB has not implemented contingency measures. We note that the potential variation between projected and actual results is likely to be materially greater than it might otherwise have been. We take no responsibility for the achievement of projected or predicted results or balances."

# PwC scope and limitations

## Interviews conducted

### Key individuals we have interviewed:

#### BBB

- CEO
- Chair
- Financial Controller
- Head of Operations
- Head of Delivery
- Head of Property & Engagement,
- Head of Design
- 4x Development managers

#### LBC

- Interim CEO
- Director of Growth Zone
- Executive Director of place
- Executive Director of resources and monitoring officer
- Head of Asset Management and Estates
- Head of Growth Zone
- Head of Internal Audit
- Interim Director of Law & Governance
- Risk and Corporate Programme Officer
- S151 Officer and Director of Finance

#### Others

- External Auditors of the Council and former auditors of BBB
- Former S151 Officer at LBC
- Trustee of Croydon Affordable Housing LLP

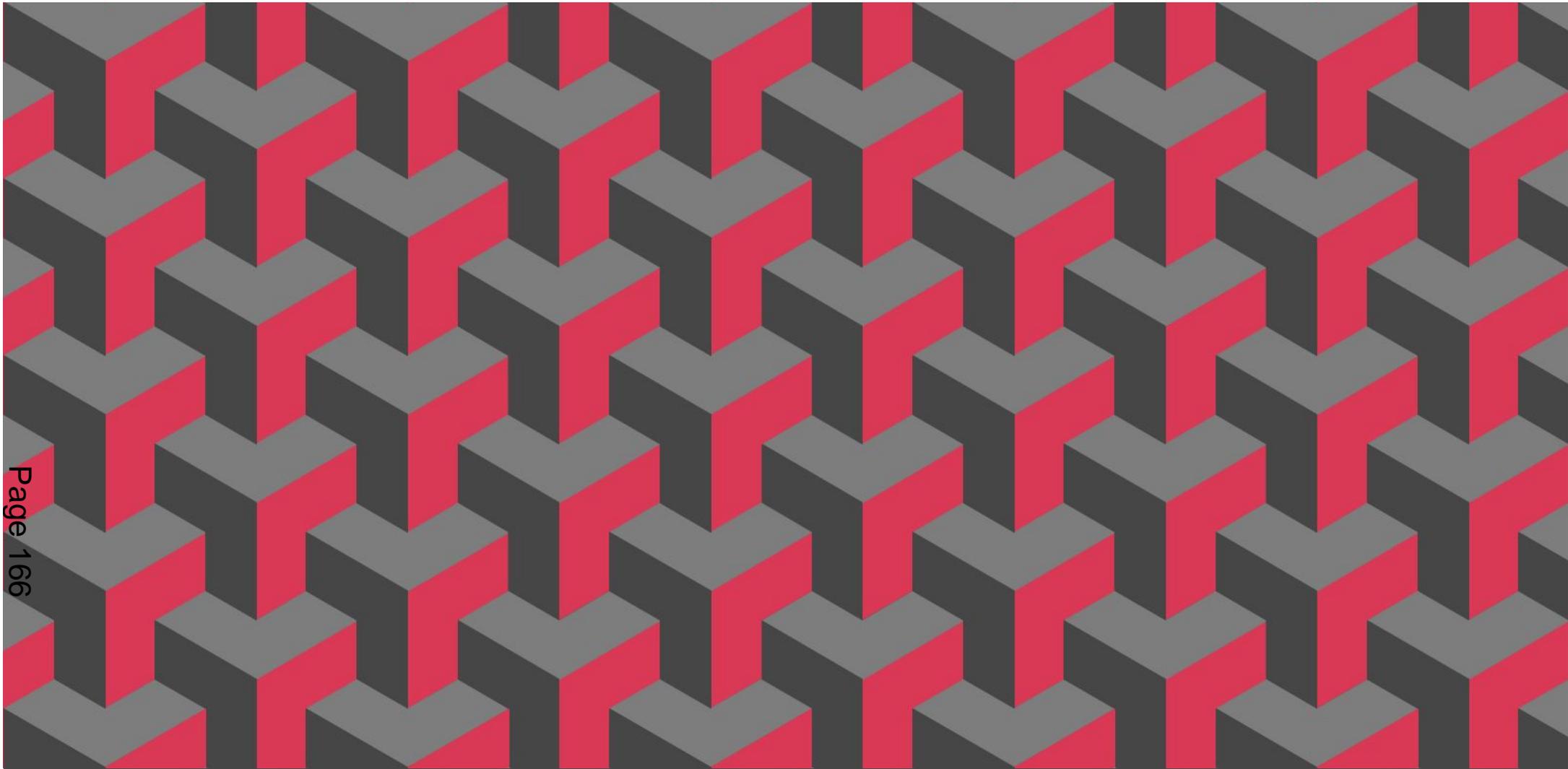
# Glossary

Our report includes a number of terms and short descriptions, which we define alongside:

Term	Definition
AR	Affordable rent
BBB	Brick by Brick Croydon Ltd
BTR	Built to rent
CAH	Croydon Affordable Homes LLP
CAT	Croydon Affordable Tenures LLP
CEO	Chief Executive Officer
CGA	Common Ground Architecture
Company	Brick by Brick Limited
Council	London Borough of Croydon
CT	Corporation tax
EBIT/ EBITDA	Earnings before interest and tax/ Earnings before interest, tax, depreciation and amortisation
EUV	Existing use value
FOT	Forecast outturn
FY19/20, FY20/21, FY21/22	Financial years ending March 2019, March 2020 and March 2021
GLA	Greater London Authority
Group	LBC's subsidiaries, Brick by Brick Ltd and Croydon Affordable Homes Ltd.
GZ	Growth Zone
HMRC	Her Majesty's Revenue & Customs
HTB	Help to buy
LBC	London Borough of Croydon Council
LLP	Limited liability partnership

Term	Definition
Ltd	Private limited company
M6	Month 6 financial period, ending 30 September 2020
MBO	Management buy out
MEIP	Market Economy Investor Principle
MTFS	Medium term financial strategy
MVL	Members voluntary liquidation
NED	Non-executive director
P&L	Statement of profit and loss
p.a.	Per annum
PAYE	Pay as you earn
PC	Practical completion
PFI	Prospective financial information
PwC	PricewaterhouseCoopers LLP
Q1, 2, 3, 4	Quarters ended/ending June, September, December, March
RIF	Revolving Investment Fund
S/O	Shared ownership
S106	Section 106 - the legal agreement between a developer seeking planning permission and the council
S125	Legal agreement between tenant and landlord when tenant is eligible for the Right to Buy to Right to Acquire
Sensitivity	The estimated illustrative financial effect of a change to a key assumption, to reflect either a vulnerability or an upside
SME	Small and medium enterprises
SWOT	Strengths, weaknesses, Opportunities, Threats
TFL	Transport for London
Tranche 1	Site developments in construction

Term	Definition
Tranche 2	Site developments with approved / submitted planning applications
TUPER	Transfer of Undertakings (Protection of Employment) Regulations
VAT	Value added tax
VFM	Value for money
Vulnerability	An unquantifiable sensitivity that may present upside or downside risk
YTD	Year to date



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**London Borough of Croydon**

**‘Collective Corporate Blindness’**

**How did the Council get here?**

**Independent investigation into the Council’s corporate management actions, organisational systems and its operating environment, in response to the Report in the Public Interest**

**Report for the Interim Chief Executive**

**Richard Penn  
Independent Investigator  
March 2021**

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## Background and Methodology

- 1.1 I was commissioned in November 2020 through the Local Government Association, of which I am a Senior Associate, to conduct an independent initial investigation of senior management and elected member actions in respect of the findings of the Report in the Public Interest by the external auditors to help the Council understand how it had reached this position.
- 1.2 I have been asked to explore what led to the Council being in such a perilous and precarious financial position. Did it derive from shortcomings and failings in systems and processes of governance and management, and/or what was the specific contribution of any individual shortcoming or the failure of political leadership and professional management?
- 1.3 I was required to produce a report on the investigation with my findings, conclusions and any relevant recommendations. I was asked to assess whether the findings of this initial investigation have given rise to any formal concerns about activity and or professional conduct that would need to be considered under other relevant processes. That assessment is provided in the ‘Conclusions and recommendations’ section of this report. The detailed terms of reference for the investigation were finalised and are set out at Appendix 1. Appendix 2 sets out my credentials and details of my qualifications and experience.
- 1.4 I was provided with a copy of the Report in the Public Interest (RIPI) by the Council’s external auditors, Grant Thornton. In the course of my investigation I received a number of other relevant documents that are listed at Appendix 4.
- 1.5 My investigation has included a review of the documents listed in Appendix 4 together with formal interviews with individuals both inside and outside the Council. Initially individuals were invited to take part. Following a number of suggestions from those initial interviewees about further potential interviewees, in the interests of transparency and openness, participation in the investigation was made available to all elected members and staff at the Council. The terms of reference were also published.
- 1.6 I interviewed 64 individuals including all current members of the Cabinet, a number of Council Committee Chairs and former Cabinet members, members of the Opposition Group, trade union representatives, the Interim Chief Executive, all members of the Executive Leadership Team, other senior Council employees, representatives of external partners, the former Chief Executive and the former Executive Director of Resources and S151 Officer. The purpose of these interviews was to gather information, professional and personal opinion, as well as reflections from these individuals. A record of each interview was provided as a draft to each interviewee for their agreement as a correct summary. I also received written submissions from a number of Council employees and from local residents.
- 1.7 It is helpful to explain the commitments given to those who came forward for interview in order to understand the interview reporting style used in this report. The Terms of Reference for the investigation stated that:  
  
*‘the report will not identify individuals either by name or job title in its commentary or recommendations’.*
- 1.8 When I use commentary from an interview this is attributed to an ‘Interviewee’ and an ‘Interviewee number’ is used. A group descriptor e.g. (‘member of Executive Leadership Team’) is also provided when appropriate to give some context about the interviewee’s perspective and involvement in matters. Other descriptors are also used to describe the (current) holder of a post

title, the (former) holder of that post title and the (previous) holder of that post title. At the beginning of each interview I read out a statement which explained that:

*'the Council has confirmed that my report will be in the public domain so any relevant views or comments expressed by you may be included in my report and be attributable to you. If you would prefer any views or comments to be anonymous, I will endeavour to ensure that is the case but it may be impossible to effectively mask the course of any such views or comments'.*

- 1.9 Subject to the governance requirements of the Council, this report will be presented to a relevant Council body for full consideration in the near future and will subsequently be in the public domain.
- 1.10 The report brings together the views of a wide range of people about the context and culture, actions and inactions that led to the issues raised in the Report in the Public Interest that was published in October 2020. The report also draws on conclusions set out in a number of other relevant reports.
- 1.11 Some of the views from these individuals and reports present contrasting opinions of what has taken place and why. This is not unsurprising. Participants in complicated events rarely have identical perspectives on exactly what happened, and why things happened in the way they did. Hence, I present them all in this report to illustrate the different perspectives on activity at Croydon Council over the last few years. It will be evident to the reader that whilst there are some differences, there is also significant alignment of separate and independently given views around the causal factors.
- 1.12 In the '*Conclusions and recommendations*' at Section 14 (page 148) I have set out my considered conclusions on the themes in this report, basing them on the clear triangulation of the views I have heard and the documents read during the course of this investigation. I have also recommended that consideration should be given by the Council to potential actions in respect of a number of senior officers and elected members.
- 1.13 I thank all those that I interviewed as part of this investigation for their willingness to share with me openly and comprehensively their experience and their personal and professional observations, opinions and conclusions about what led to Croydon Council's '*collective corporate blindness*' in the past, and what needs to change to ensure that there is no repetition in the future.

## The situation at the London Borough of Croydon

- 2.1 On 23 October 2020 the Council's external auditors (Grant Thornton) issued a Report in the Public Interest concerning the Council's financial position and related governance arrangements.
- 2.2 The Report was published as the external auditors were of the opinion that the Council:
- i. has experienced deteriorating financial resilience for a number of years,
  - ii. has significant issues relating to its financial sustainability,
  - iii. has not responded promptly to previous audit recommendations and concerns,
  - iv. and that this needs to be brought formally to the public's attention.
- 2.3 This is one of the most serious steps a local authority's external auditors can take, and the Report drew to the public's interest the Council's deteriorating financial resilience, its low levels of reserves, its poor governance practice and significant overspending of its approved budgets each year. The Report made 20 recommendations for improvement which were accepted by the Full Council at its meeting on 19 November 2020. The Council agreed to produce a detailed plan – the Croydon Renewal Improvement Plan - to respond to the recommendations in the Public Interest Report. In addition to the recommendations made by the external auditor, the Council agreed four additional local recommendations to support its own improvement work.
- 2.4 The Council also agreed to establish an independently chaired Croydon Renewal Improvement Plan Board. The Croydon Renewal Improvement Plan Board will have oversight of the delivery of the Croydon Renewal Improvement Plan. It will support and challenge the Council's improvement as it seeks to recover its financial position, strengthen its governance and ensure that it is an effective organisation that delivers value for money services to the people of the London Borough of Croydon. The Croydon Renewal Improvement Plan Board will submit a public report on its work to the Council every three months.
- 2.5 The Council is currently subject to its second S.114 notice and all expenditure is strictly controlled by the (current) S151 Officer/Director of Finance, Investment and Risk. The Council is forecasting a £66m overspend in this financial year 2020/21. After the first Section 114 Notice was issued in November 2020, the Council imposed a complete restriction on all new, non-essential spending. Essential spending that continues includes protecting vulnerable children and adults, keeping the Borough's streets clean and safe, and Croydon's ongoing response to the pandemic.
- 2.6 The Council also received at its Cabinet meeting on 25 November 2020 an independent report from PwC - the Strategic Review - that assessed the Council's external companies and other entities as part of the preparation for the submission to MHCLG for the capitalisation direction to enable borrowing. This Review raised serious concerns about the quality of the Council's governance of these entities and highlighted the level of risk and liabilities the Council bears in relation to its investments since 2017.
- 2.7 The Council has now received the report to the Secretary of State for Housing, Communities and Local Government from the non-statutory Rapid Review Team that was commissioned to assess the Council by the Ministry of Housing, Communities and Local Government (MHCLG). The Rapid Review Team, although non-statutory, operates within the powers given to the Secretary of State in the Local Government & Housing Act 1999 which established the duty of best value for all local authorities. This duty requires Councils to *'make arrangements to secure continuous improvement in the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.'* The Team's report provided advice to the Secretary of State for

Housing, Communities and Local Government on his response to the Council's formal request for a significant capitalisation direction (a loan) needed to balance the Council's budget for this year and for the next three financial years. On 15 December 2020 the Council requested a Capitalisation Directive for borrowing of up to £150million, £70million of this to cover the current financial year deficit, and an additional £80million to cover the period from April 2021 to March 2024. As part of its submission, the Croydon Renewal Improvement Plan sets out the actions the Council is committing to implement to ensure that it meets its best value duty and has a financially sustainable balanced budget by March 2024.

- 2.8 The Minister's response to the report of the Rapid Review Team has been that, having carefully considered the report, in view of the past failings of the Council, the size of the challenge it currently faces as a direct result and in the context of the very considerable financial support that it is seeking from MHCLG, the Council should be the '*subject of continued monitoring and Scrutiny*'. The Minister has appointed an Improvement and Assurance Panel, led by Tony McArdle who will be supported by members with specialist expertise in finance and commercial asset management. The first task for the Panel is to provide an independent view of the Council's Exceptional Financial Support request and its improvement plan.
- 2.9 The report of the Rapid Review Team will be presented to a future meeting of the Council and any recommendations for future action from that report will be incorporated into the overarching Croydon Renewal Improvement Plan
- 2.10 Over the last few months the Council has seen major changes in its political and managerial Leadership. In August 2020 the former Chief Executive left the authority and Katherine Kerswell was appointed as Interim Chief Executive in September 2020. In October 2020, Councillor Tony Newman, the then Leader of the Council, resigned and Councillor Hamida Ali was elected by the majority party as the new Leader of the Council and this was confirmed at Full Council on 22nd October 2020. Following that, Councillor Hamida Ali announced the composition of a new Cabinet. Finally, an Interim Assistant Chief Executive, Elaine Jackson, funded by the LGA, joined the Council in late October 2020 to support the Council's transformation agenda to help put the Council on a sustainable financial footing.

## My investigation

- 3.1 In order to respond to the issues raised in the Report in the Public Interest, I was required to investigate corporate management actions, organisational systems and the Council's prior operating environment. There is a great deal of detail about these issues in the various reports that have been commissioned recently including in particular the Report in the Public Interest
- 3.2 and the PwC Strategic Review.
- 3.3 The key question that my investigation is designed to answer is, '*how has LB Croydon got into the situation as described in Section 2 above*' and based on my findings, to offer some analysis and explanation to aid the necessary organisational learning and any additional Croydon Renewal Improvement Plan actions.
- 3.4 All of those interviewed and all of the written submissions that I received had relevant information, personal and professional observations, reflections and comments to make about the cause of what the external auditors described as '*collective corporate blindness*' in the Report in the Public Interest.
- 3.5 This report sets out not only what has already been said in official documents that are in the public domain such as the Report in the Public Interest, the PwC Strategic Review and the report of the Rapid Review Team, but also the genuinely held personal and professional views and opinions of individuals, mainly elected members and council officials, as well as individuals external to the Council who were directly involved in the events that have taken place over the last few years.
- 3.6 The views and opinions expressed in this report are not the formal views and opinions of the London Borough of Croydon.
- 3.7 Some of those whom I interviewed were very reluctant to have their personal and professional views and opinions directly attributed to them and I have attempted as far as is possible to protect their identities. The terms of reference committed to not using any individual's job title or name in the report in relation to expressing their opinions. Some individuals have further expressly requested not to be identified and this has also been honoured as far as is possible but that is difficult in some cases and the more senior a person is, the more likely it is that they could be identified.
- 3.8 In accordance with best practice with initial investigatory reports, those individuals who have had concerns raised about them during my investigation have been advised of the nature of those concerns in advance of publication to a relevant Council body. They were offered the opportunity of reviewing the report and sending me any proposed amendments of factual accuracy. Comments were received from or on behalf of four of the nine individuals offered this opportunity. Only one of those four individuals requested a factual accuracy revision. I have accepted that request in full and paragraph 6.42 on page 47 has been revised as requested. This revision was reported by me to the Appointments Committee as part of my feedback on the factual accuracy check. Should it be considered necessary to initiate any subsequent formal processes, any such individual will have a full opportunity to present their response to any such concerns raised as part of that consideration in accordance with any relevant contractual policies and before the decision upon whether to commence any formal process is taken.

3.9 I concluded that the most appropriate way to make best use of both the documentary material and the records of many interviews I have gathered is to deal with a number of discrete but interrelated themes. These themes are:

- Governance
- The Cabinet
- The Executive Leadership Team
- The roles of elected members and officers
- Financial management
- Scrutiny and Overview
- Risk assurance/management
- Performance management
- Asset investment
- Organisational culture

## Governance

### 4.1 Governance is defined as:

*'the way in which organisations are directed, controlled and led. It defines relationships and the distribution of rights and responsibilities among those who work with and in the organisation, determines the rules and procedures through which the organisation's objectives are set, and provides the means of attaining those objectives and monitoring performance. Importantly, it defines where accountability lies throughout the organisation. Good governance in local authorities ensures that decision-making is lawful, informed by objective advice, transparent, and consultative.'*

*(‘Local authority governance’ National Audit Office)*

### 4.2 Croydon’s current decision-making model:

A number of legislative changes have influenced the current governance arrangements for the Council. The Local Government Act 2000 (‘the 2000 Act’) introduced a separation of powers in local government for all but the smallest local authorities with the aim of making council decision-making efficient, transparent and accountable. The 2000 Act required most local authorities to change governance arrangements from the committee system to an Executive-scrutiny model. Croydon Council has established decision-making arrangements since 2001 that comply with the requirements of the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007 and the Localism Act 2011. They are known as the Executive Leader and Cabinet model. The Local Government and Public Involvement in Health Act 2007 restricted the governance options available to local authorities and required the Council to introduce one of two models: a directly elected mayor or a new style ‘strong ’council leader. Both models placed executive powers in the hands of an individual, who, in the normal course of events, would serve an uninterrupted four- year term. A directly elected mayor and the new style council leader both have the power to appoint and dismiss Cabinet members and decide what executive powers they would exercise (if any).

Croydon Council resolved to introduce the strong Leader and Cabinet model following the local elections in May 2010. However, in practice executive powers have rarely been exercised by the Leader in isolation. In Croydon, the vast majority of Executive decisions have been taken by the Cabinet collectively, to individual Cabinet Members or to officers to undertake the day to day running of council services. The Localism Act 2011 increased the governance options for local authorities to Executive arrangements (leader and cabinet or directly elected mayor and cabinet), a committee system and prescribed arrangements (where councils propose their own system of prescribed arrangements, requiring Secretary of State approval). The Council retained the strong Leader and Cabinet model. Theme 4 of this report - the roles of elected members and officers, further details the legislative background relating to governance options available to councils.

### 4.3 The Grant Thornton Report in the Public Interest was very clear in its assessment of the way the Council has been governed recently. It said:

*‘There has been collective corporate blindness to both the seriousness of the financial position and the urgency with which actions needed to be taken. The Council commissioned a review of its governance arrangements in March 2020 which concluded that improvements were needed to the culture around decision making. We agree with this recommendation and we note that we have not seen an*

*improvement in the culture of decision making as it relates to financial sustainability. 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 addressing 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. Councils are statutory entities which must follow the law. The law is very clear on the legal requirement for councils to set a balanced budget. The Council's fragile financial position and weak underlying arrangements have been ruthlessly exposed by the impact of the COVID-19 pandemic.*

*Had the Council implemented strong financial governance, responded promptly to our previous recommendations and built up reserves and addressed the overspends in children's and adult social care, it would have been in a stronger position to withstand the financial pressures as a result of the COVID-19 pandemic. The Council needs to urgently address the underlying pressures on service spends and build a more resilient financial position whilst also addressing the long-term financial implications of the capital spending and financing strategy together with the oversight of the Council's group companies.*

*The missed opportunities represent deficiencies in financial planning, financial management, risk assessment, communication between officers and members and challenge from members before approving the strategies and plans that have led the Council needing in-year external financial support. Action must be taken to restore the Council to a sound financial position supported by effective governance.'*

4.4 Interviewee 48 (external to the Council) told me that there are real concerns about the governance arrangements in Croydon. In particular, there are issues about record keeping by the Council. An example of this is that allegedly there were discussions about the proposed investments in the Croydon Park Hotel and yet there is no record that could be found of those discussions. Interviewee 48 had been told by the (former) Director of Finance that there was a record of the discussion that took place of the risk assessment of major investments by the Council but Interviewee 48 said that the (current) Director of Finance has not been able to find the formal record of any such discussion. In Interviewee 48's opinion that is simply not good enough when significant public money (circa £30 million) is being invested. Linked to this is that there are no formal records or details that anyone was 'keeping an eye 'on the £200 million of legal loan agreements to Brick By Brick, and ensuring that the returns (which were a fundamental part of the original business case for members 'decision to agree to take out that borrowing); actually materialised. There appears to Interviewee 48 to be no clarity about which officer was accountable for this activity, other than the need for such action residing with the Council's Statutory Officers.

4.5 The Council commissioned a Governance Review Panel in 2017 to independently review its governance arrangements. The final Report was presented to Full Council in March 2020.

4.5.1 The Introduction to the Report stated that:

*'it is clear that there is nothing fundamentally wrong with how Croydon takes its decisions... But there was nevertheless considerable dissatisfaction with the present arrangements. Many Members believed they could not influence decisions and that their knowledge and experience of their local communities was not put to good use. The Panel does not believe that the answer lies in structural change to governance such as a return to the committee system, but rather lies in improving the current*

*culture around decision-making. All the evidence the Panel considered supports the primacy of culture over structure.'*

4.5.2 The Report went on to say that:

*'Croydon has operated a version of the Leader and Cabinet model since 2002. Initially, the Executive function of the Council was held by the Cabinet collectively, but following legislative changes in 2010 Croydon moved to the Strong Leader model, in which all Executive power is vested in the Council Leader in the first instance. Previous reforms had streamlined decision-making and reduced bureaucracy, but also potentially created a new set of issues that need to be considered. Governance was an issue covered by both political parties represented on the Council in their respective manifestos for the 2018 local elections.'*

The Croydon Labour Party Manifesto stated a commitment to:

*'undertaking a review of the Council's governance structure bringing together best practice across the country and beyond to develop a model tailored to the needs and aspirations of Croydon residents'*

The Conservative Party Manifesto said:

*'we will immediately reform the cabinet decision-making system and ensure that it becomes properly accountable and transparent... in the longer term we will review whether we should ditch the cabinet/scrutiny model which is responsible for much of the secrecy around the town hall'*

Having been successful in the 2018 local elections, the Labour administration embedded its manifesto commitment to undertake the review in the council's corporate plan and Council subsequently considered and agreed the establishment of the Governance Review Panel. Undertaking a comprehensive governance review was timely. Both regionally and nationally there have been a number of important issues that have affected how residents perceive decision making at the Council. National politics, including the EU referendum and Brexit alongside several general elections being held in a short space of time, has led to an increasingly divisive and polarised political debate. On a more local level, changes to the Local Plan in Croydon and an increase in housing development within the Borough have also been politically divisive and have become a key point of political contention. A decade of funding cuts and increasing demand for councils' services, especially social care, has meant that councils needed to find savings often resulting in withdrawal of funding from services such as housing, transport and culture. In Croydon there has been a 75% cumulative reduction in government funding of council services and this has impacted the availability and provision of services to Croydon residents. Local authorities also operate in an increasingly technologically advanced world. Local communities are increasingly connected and local news is now published and shared almost instantly. This means that both news on decisions, as well as commentary and political opinion on them, are shared significantly more quickly than previously. All these factors combined have also increased the scrutiny that the Council's decision making is placed under. At the same time, they have also raised expectations amongst residents in terms of both their ability to participate in and influence council decision making and the openness and transparency of Croydon's democratic processes.

The Panel does not believe that the answer lies in structural change to governance, such as a return to the committee system, but rather lies in improving the current culture around decision making. All the evidence the Panel considered supports the primacy of culture over structure.

But culture change cannot simply be mandated, it needs to be built and supported. We make recommendations with regard to getting started on culture change and also recommend some structural change which we think will exemplify, support and enable a new culture. The key conclusions of the Panel were that even though the Council has fit for purpose formal governance arrangements, there is dissatisfaction amongst Members and residents who found it hard to get timely information and to influence decisions. The Council can do better and become the kind of Council it aspires to be by:

- *making a step change in its communication and engagement with the residents of Croydon*
- *improving transparency by introducing a forward plan and clarifying how the Council makes its decisions*
- *improving the culture of the Council including officer and Member relationships*
- *providing better support to non-Executive Members to carry out their various roles*
- *revising the existing Leader and Cabinet model of governance towards more collective decision-making and establishing Cabinet Member Advisory Committees.*

Implementing these recommendations will enable the Council to pioneer a new way of working that better matches its aspirations to enhance councillor involvement, local democracy and community participation with a governance model tailored to the needs of Croydon's residents.'

- 4.6 Interviewee 47 (external to the Council) told me that the Labour Group members on the Governance Panel were concerned with involving back-benchers more in decision making, and the Conservative Group members believed that things were being hidden from them, and that they found out about what was happening much too late. Despite their pre-existing relationships, the political groups did work well together on the Review and the Report was welcomed and signed up to by both sides. Interviewee 47 said that they had been told that there was a '*winner takes all*' approach when there was a change of political control, that Croydon was a highly political place and that party politics permeated everything there. Interviewee 47 said that the Conservatives were keen on a return to the Committee model or an Elected Mayor to replace the current Strong Leader and Cabinet model. Neither the former Leader nor the Labour Group were keen on either of these options. The recommendation of the Panel was for a form of 'hybrid' system that would allow for more backbench and opposition participation and the former Leader and both Groups supported this, although there were concerns about the increase in workload for officers of additional meetings but some resources had been allocated to enable them to be addressed.
- 4.7 Interviewee 1 (a former and/or current member of the Cabinet or Committee Chair) told me that it is clear that a number of opportunities were missed in the period this person was in office. There was a commitment in the 2018 election manifesto to a fundamental review of governance at the Council. That review did take place with an independent Chair and with both parties represented on the Panel, but it was very slow in its work. The Labour Group would have preferred a hybrid Cabinet model to have been implemented - more like a collection of Select Committees - but in the end little really changed.
- 4.8 Interviewee 19 (a former and/or current member of the Cabinet or Committee Chair) told me that they felt that the thrust of the recommendations of the Governance Panel still holds true. Most councillors have not had timely access to information. This has led to poor transparency and poor

decision-making and made 'holding to account' very difficult either by the Opposition or by the Scrutiny and Overview Committee. Interviewee 19 said that the disappointing thing has been the slow speed of implementation of the recommendations.

4.9 The PwC Strategic Review also pointed to a number of serious failings in governance:

- between the Council as sole shareholder and Brick By Brick.

The Review concluded that:

- the interaction between the London Borough of Croydon (LBC) and Brick By Brick has historically been over reliant on relationships rather than formal structure, weakening the governance around decision making. The introduction of the Shareholder Board has improved the formality of relationship, but there remains a lack of clarity on how the Council should manage this wholly owned subsidiary.
  - the Council needs to address the lack of suitable Council representatives on the Brick By Brick Board. These individuals must be sufficiently skilled to manage the potential conflicts of being a Board member of a private company whilst also a paid employee of LBC.
  - the quality of financial reporting received by the Council from Brick By Brick needs to improve in order to allow LBC to take more informed decisions over its investment.
  - business plans should be supported by detailed financial models against which Brick By Brick's performance can be assessed.
- Brick By Brick

The key findings in the Review of the governance of Brick By Brick included:

- the Brick By Brick Board membership at present is highly specialised in its development but lacks broader financial experience and the level of financial information made available to the Board (and the Shareholder Board) is limited.
- there is very limited evidence of reporting of financial performance against its business plan for the year to date, nor is there a forecast outturn for the year. The business case (as presented to Cabinet) only provides aggregated financial forecasts without a recognisable profit and loss statement, balance sheet or cash flow. Supporting cash flow models have been provided however there have been difficulties reconciling these with the submitted plans
- governance at an operational level around design and construction progression seems reasonable with dashboards maintained for each site containing standing data, RAG assessed progression of Time, Development Cost and Quality with development and planning issues exception reported. A sale update paper is also presented at every board meeting.

- however, detailed financial and sales information is currently not reflected in these dashboards and overall forecast costs to complete a project are not easily ascertained.
- a separate sales paper is prepared for the meetings.
- The London Borough of Croydon

The key findings in the Review of the governance of Brick By Brick included:

- the Cabinet has approved the further purchase of 231 Brick By Brick properties, but has not yet entered into contract for any of these. We understand that the status of these property purchases is ‘pending, subject to review’. The Council should review the proposed purchases of these properties in light of current market conditions, so that it does not exceed these thus exposing the Council to risk.
- the Council has not created sufficient capacity in its own Teams such as (planning) to allow for the increased demand for services that its drive to create affordable homes is generating. There is evidence that some of the delays experienced on Brick By Brick development sites are being driven by longer than normal process time in the Council’s operational Teams.

Since the Council must avoid preferential treatment to Brick By Brick, it may wish to consider general additional capacity in these Teams to support quicker processing across the board. This will support quicker resolution for all developer delays including Brick By Brick.

- given no equity funding has been provided to date, before committing to any formally agreed revision to the funding structure of Brick By Brick it is recommended that LBC take external advice on the 75:25 debt equity model.
- the Council should regularly review the financing and operational arrangements of Brick By Brick for ongoing compliance with State Aid requirements, particularly in the context of:
  - maintaining a state aid compliant capital structure
  - pricing loans on a state aid compliant basis which reflect the risk associated with investing in Brick By Brick specifically.
- there are significant concerns around the adherence to governance procedures within LBC and its subsidiaries. The Council should consider commissioning a wider and thorough governance review of the organisation. There is insufficient capacity within the LBC corporate governance Team to appropriately oversee the application of governance across the organisation. LBC should review its governance Team structure and ensure it has the required level of capacity and capability along with senior input to ensure best practice governance procedures are adhered to.
- it has proven difficult to obtain a complete set of documentation in relation to loans and other agreements between LBC and its

subsidiaries. LBC should ensure that it collates and maintains a complete central repository of all commercial arrangements between itself and its subsidiaries.

- given the level of risk associated with Brick By Brick, the Council should consider reviewing the Brick By Brick risk entry on the central risk register and reflect the risk outside of general governance matters.
- the assumptions on which the original business case was based (forecast business rates increases and the development of a Westfield retail complex) are no longer valid and the business case should be revised.
- this should be done building on the COVID-19 impact review already completed and must consider the change in the economic forecast for the duration of the proposed investment period and the changes in the requirements of Croydon's population and behaviours following COVID- 19 and any associated downturn.
- LBC is near to completing a further review of GZ funding and is now considering a reduction in funding to £3m in FY20/21.
- annual and quarterly review meetings with GLA and the Mayor of London's office: Frequency of governance meetings with stakeholders may not be sufficient in light of ongoing economic uncertainty
- the Council may wish to consider increasing frequency until such time a revised GZ business plan is agreed including the underpinning assumptions over funding -i.e. business rate increases and the Council's ongoing ability to utilise these.
- any subsequent increase in planned investment should be supported by a business case and taken through robust governance and sign off processes for full scrutiny.

4.10.1 Interviewee 3 (external to the Council) told me that the last but one Chief Executive had led the Croydon Challenge programme with the aim of making £100m savings over three years. Interviewee 3 had played a part in that process, and on subsequent appointment to a further post it became clear that there was a real issue with the agreed savings from this Challenge programme having not been achieved in some areas. It was Interviewee 3's opinion that in the areas where savings had been achieved, for example in Finance and Children's Services, that there had been a serious loss of capacity. There were also major issues relating to the culture of the organisation. Interviewee 3 said that the way in which the savings had been implemented under the Croydon Challenge programme resulted in a very 'command and control' culture, an inward looking organisation with very little work with partners, residents and external bodies; and with Directorates working in silos. Interviewee 3 was clear that cultural change was required in order to prepare for the significant challenges ahead. The administration was clear when the last but one Chief Executive left in 2016 that it wanted a new approach to the way the Council delivered and the organisation was run.

4.10.2 The May 2018 local elections resulted in a second term for the Administration which returned to its work, in Interviewee 3's opinion, with greater confidence. A Cabinet/ELT 'away day' was organised on the Monday after the election and at that event the Leader and Cabinet members

made it clear that from then onwards Croydon was going to be a '*politically led authority*'. Interviewee 3 believes that this was a response to the legacy of the Ofsted 'inadequate' judgement and the consequential loss of trust by members in officer advice. There had been a Governance Review throughout this period initiated by the (former) Leader that was designed to look at the Council's political governance. The challenging relationships between members and officers were clearly exposed in the final report of the Governance Review Panel which was presented to the Council in March 2020.

- 4.11.1 Interviewee 4 (a member of the Opposition Group) had been a councillor in Croydon for many years and had held office in the political group. The Cabinet system was already in place when Interviewee 4 had joined the Council so Interviewee 4 had never experienced the old Committee system that people talk about, in their view, with such 'fondness', except those who were in the Cabinet who were very content with the Leader and Cabinet model. In the view of Interviewee 4 the idea of the new model was that Cabinet members would be identifiable and could be held to account for the decisions they took, but it has not really worked that way and decisions are not transparent nor are Cabinet members accountable.
- 4.11.2 Interviewee 4 has seen a succession of Chief Executives at the Council and the first experience was of an old fashioned non-political Chief Executive who treated the Opposition Group in Interviewee 4's view as it should have been. The Council then moved to the 'Strong Leader' model and had a succession of Chief Executives who in Interviewee 4's view became ever more political to the extent that, until fairly recently, it has been difficult to tell officers and members apart. The Labour Administration in 2014 accelerated this pattern, and Interviewee 4 stated it has become even more the case since the last local elections in 2018.
- 4.11.3 I was told by Interviewee 4 that the current Administration decided to severely restrict the use of Part B (private reports to Cabinet) so delegation had been increasingly used to run the Council. So in Interviewee 4's opinion, what has now happened is that the documents that go to the Cabinet meetings and that are therefore in the public domain are very strategic in nature, and all the detailed implementation of policy is done through delegated powers so there is almost no scrutiny of the majority of the Council's decisions. The Council's scrutiny function in Interviewee 4's view has been pretty ineffective in any case, in their view dominated as it is by Administration members. It needs to be noted at this point that Scrutiny and Overview Committees are required to be proportionate to the political balance of the Council in terms of their membership. It was described to me by Interviewee 4 that the work of the Scrutiny and Overview Committee in Croydon is more open and transparent than that of the Cabinet but hardly of value because it is so ineffective and relies on agreement and consensus rather than challenge. As told by Interviewee 4, this is an approach that is favoured by the longstanding Chair of the Committee. Interviewee 4 told me that the days when much of the Council's decision making on contracts was through the Corporate Services Committee are very much missed. At that time, it is suggested, decisions would not have been made without any involvement by the Opposition such as the one to set up Brick By Brick. In Interviewee 4's view, no one really understood what they were doing when that was set up including the former Leader and the rest of his Cabinet, so in Interviewee 4's opinion, appalling decisions have been taken in ignorance with really dire consequences.
- 4.11.4 Interviewee 4 said that Croydon has always been a very political place and the adoption of the strong Leader model was a big mistake. Interviewee 4 had looked to change it in 2011 but there was no will amongst members for that change. It did become an issue in the 2018 election and in the aftermath the Administration did set up a cross-party working group to look at options. The then Leader's initial favoured model was a Select Committee model that had its drawbacks but, according to Interviewee 4, would have been a real improvement. However, the result was watered-down to Cabinet Member Advisory Committees that looked likely to be ineffectual and could easily be ignored by a determined Cabinet member.

- 4.12 Interviewee 5 (a former and/or current member of the Cabinet or Committee Chair) had never been happy with the strong Leader model and was very hopeful when the Council had the choice to go back to the Committee system in 2011, but Interviewee 5 was very unhappy when the decision was made to stay with the strong Leader model. Interviewee 5 had always felt that this model denies most councillors the opportunity to be involved in decision-making. There have been policy development meetings for the Labour Group members but these were poorly attended and sometimes Interviewee 5 was the only person to turn up at meetings.
- 4.13 Interviewee 6 (external to the Council) told me that the shock of the ‘inadequate’ Ofsted judgement in 2017 did affect members’ trust and confidence’ in officers’ advice as the political Leadership had been advised to expect a different judgement. When the new administration was formed following the 2018 local elections there was definitely a different attitude by leading members. They made it clear that in line with the strong Leader model Croydon was to be very much a member-led Council from that point on. The political Leadership’s focus was very much on providing the financial support to deliver the key priority of improving Children’s Services. In Interviewee 6’s opinion, funding was allocated too easily to areas without a clear timeline associated with it and Interviewee 6 said that those views had been made clear at the time.
- 4.14 Interviewee 7 (a member of the Executive Leadership Team) told me that some of the Council’s corporate systems do not work as they should, and that there seems to be a total lack of the basic checks and balances that are the norm elsewhere. Interviewee 7 was alert to the risk that when you start to work for a dysfunctional organisation like Croydon if you are not careful you become part of the dysfunctional picture very quickly. Interviewee 7 also commented that there was an absence of political curiosity in Croydon, an absence of compliance with the usual checks and balances and in Interviewee 7’s view an inappropriate level of political interference in operational matters.
- 4.15.1 Interviewee 8 (external to the Council) told me that their first impression of Croydon was that it had a very different way of working. Interviewee 8 had quickly identified the impact of over-involvement by elected members in operational matters which from that individual’s significant experience is the responsibility of officers to manage. This was exemplified in Interviewee 8’s opinion by what had happened with Brick By Brick where leading members were taking decisions without details of any reference to due process. Interviewee 8 also commented that there seemed to have been a reluctance by some senior officers to publicly or privately question, challenge or disagree with what the (former) Leader and the (former) Chief Executive wanted to happen. Interviewee 8 also expressed a personal opinion that it was clear to them that the (current) Brick By Brick Chief Executive had had direct access to the previous leading Cabinet members, who then through and probably with the agreement of the (former) Chief Executive, instructed others to make happen what they wanted. Interviewee 8 questioned whether that was with regard to due process.
- 4.15.2 Interviewee 8 also said that the Brick By Brick Chief Executive should have worked through the Croydon officer structure and proper governance and not used previous Cabinet members to seemingly get what he wanted, much of which may not have been in the Council’s tax-payers interest and which has subsequently been shown to have cost the Council dear. Based on the documents that Interviewee 8 had seen, until 2018 things did seem to happen in line with the loan agreements but then for the next two years Brick By Brick asked for more and more money and was given this it appears, without due reference to the loan agreements or any apparent formal governance that Interviewee 8 has been able to discover. Those senior officers, who by normal local government operating practices should have raised challenges, queries or even disagreement with this practice, without information to the contrary seem to have acted as silent bystanders or had been compliant with these abnormal practices. Interviewee 8 stated in their opinion that this does raise serious concerns in regard to the professional judgment and conduct of the Council’s Statutory Officers in relation to this practice.

- 4.15.3 Interviewee 8 expressed the view to me that maybe one of the causes of this situation is that both the (current) Monitoring Officer and the (current) S151 Officer were internal appointments and had become used to the Croydon way of working, which had developed over a long period of time so perhaps they knew no differently. As Statutory Officers, their legal duty and personal responsibilities required them to intervene to ensure proper safeguards on the expenditure of public money but from not having seen any details to the contrary, it appears they did not, and nor did the (former) Chief Executive. Interviewee 8 said that there were clear opportunities for council officers to have intervened, to have challenged and to have raised concerns about what was being agreed but from the information and documents Interviewee 8 has seen to date, it appears they had all failed to do so.
- 4.16 Interviewee 9 (external to the Council) summarised the governance issue bluntly but accurately when commenting to me that the professional officers and elected councillors really do have to explain how this situation has occurred. In Interviewee 9's long professional career, nothing like this has been seen before and the RIPI conclusion that there had been '*collective corporate blindness*' is absolutely correct.

## The Cabinet

- 5.1 The Local Government and Public Involvement in Health Act 2007 restricted the governance options available to local authorities and required the Council to introduce a choice of two models: a directly elected mayor or a new style ‘strong’ Leader. Both models placed executive powers in the hands of an individual who, in the normal course of events, would serve an uninterrupted four-year term. A directly Elected Mayor and the new style Council Leader both have the power to appoint and dismiss Cabinet members and decide what Executive powers they would exercise (if any). The Council resolved to introduce the ‘Strong Leader and Cabinet’ model following the local elections in May 2010. However, as noted previously, in practice executive powers have rarely been exercised by the Leader in isolation in Croydon. The vast majority of executive decisions have been delegated to either the Cabinet collectively, to individual Cabinet Members or to officers to undertake the day to day running of the Council’s services.
- 5.2 Section 3 of the Council’s Constitution sets out the arrangement for the Leader and Cabinet model adopted by Croydon Council. The Cabinet comprises up to 10 members including the Leader and Deputy Leader(s). Details of the responsibilities and functions allocated by the Leader to the Cabinet as a whole or to individual Cabinet members are set out fully in the Leader’s Scheme of Delegation. The Leader is responsible, in consultation with others, for shaping the plans and strategies that form the Council’s Policy Framework and recommending them to the Council; and for taking decisions on executive matters within that framework. The Leader provides overall policy direction to the Chief Executive and Executive Directors in relation to the way in which services are managed within the budgets allocated to them. The Leader may establish one or more Cabinet Committees to exercise specified Executive functions.
- 5.3 All meetings of the Cabinet are open to all members, the public and press to attend. In the event of there being confidential or exempt business to discuss, in accordance with the Council’s Access to Information Procedure Rules, that part of the meeting is held in private. Notice of meetings and availability of papers prior to a meeting are required to comply with the Council’s Access to Information Procedure Rules set out at Part 4 of the Constitution. ‘Key Decisions’ are published in accordance with the Council’s Access to Information Procedure Rules as set out in Part 4B of the Constitution. The practice to date of adhering to the publishing of reports on time is deficient.
- 5.4 Informal meetings of the Leader and Cabinet members occur from time to time. No Executive decision can be taken at an informal meeting of Cabinet members. These meetings are not subject to the Access to Information Procedure Rules. Cabinet members may publish Bulletins at regular intervals as an added means of informing non-Executive members, the public and press, of matters of significance but not requiring Cabinet consideration. The Bulletins that are issued are included in the Leader and Cabinet Questions agenda item at Ordinary Council and are therefore open to question.
- 5.5 Interviewee 10 (a former and/or current member of the Cabinet or Committee Chair) told me that the draft Report in the Public Interest was the first account that had set out the Council’s financial situation so plainly. Interviewee 10 had felt really angry about the whole situation, angry for not personally challenging the situation earlier and angry with those involved in creating the situation. Interviewee 10 felt they had been curious and inquisitive as a member of the Cabinet, but all of the questioning and challenging that had been done was done in private, and was not subject to being on the public record. Ahead of a really important budget meeting in January 2020 Interviewee 10 had asked for a briefing by the (current) S151 Officer so as to be properly prepared to debate the draft budget. But when the (former) Cabinet member for Finance and Resources found about this request for a briefing he expressed his anger to Interviewee 10 and had said to Interviewee 10 that this was an act of disloyalty and it appeared there was no trust in what Interviewee 10 was being told by him. As a member of the former Cabinet, Interviewee 10 had

always been conscious that at Cabinet meetings there was much less discussion on the major issues facing the Council compared to discussion of individual Cabinet portfolios. So, inevitably perhaps, Interviewee 10 had spent more energy and time considering the portfolio issues for which they were personally accountable. In Interviewee 10's opinion there clearly had not been enough information and discussion at Cabinet meetings previously about the Council's financial issues and the major areas of spending such as Children's Services.

5.6 Interviewee 11 (a former and/or current member of the Cabinet or Committee Chair) had become aware that two Cabinet members had met with the (current) S151 Officer in January 2020 to discuss the budget. Interviewee 11 said this was not known to them until some months later. In May 2020, two previous Cabinet members met with the (current) S151 Officer to discuss the Council's finances. Interviewee 11 said that the (current) S151 Officer informed Interviewee 11 that the meeting was taking place. Interviewee 11 was clear to me that the

5.7 description of anger in response to this news was incorrect, but instead feelings of being hurt and aggrieved they understood were more accurate. Interviewee 11 said to me that this action by the other Cabinet members had undermined the trust Cabinet members needed to have in each other. Interviewee 11 also said that there was a degree of discourtesy in the actions by these Cabinet members as they had not been discussed with the other Cabinet member first. Interviewee 11 provided me with a copy of the email that had been sent at the time to the Cabinet member involved. Interviewee 11 subsequently had a long phone call with this Cabinet member when they discussed it further. In Interviewee 11's view this was a perfectly courteous and reasonable discussion. Interviewee 11 stated that it had been emphasised that Interviewee 11 would never dreamt of stopping a Cabinet colleague from having such a meeting but would have appreciated this being discussed with Interviewee 11 first.

In considering this commentary alongside comments from other interviewees, this exchange is illustrative of the failure in the governance culture of the Council for free and unfettered access for Cabinet members to Directors and Executive Directors, and in particular in regard to essential information on finance matters being provided to all Cabinet members without any filter.

5.7.1 Interviewee 12 (a former and/or current member of the Cabinet or Committee Chair) told me that the former Cabinet had been dominated by a small group of Cabinet members who took decisions before and sometimes not even at Cabinet meetings. This was allowed to happen because the rest of the Cabinet did not question or challenge and failed to speak up even when they could see that things were not right, in the same way that officers should have challenged and given stronger professional advice. If there had been that robust challenge by both officers and members, the problems the Council is now dealing with would have been identified much earlier. So in Interviewee 12's opinion, these failings in governance allowed the developing financial problems to go unseen by members collectively, although they questioned that surely these would have been known to the (former and current) S151 Officer and (former) Chief Executive.

5.7.2 Interviewee 12 was of the opinion that most Cabinet members just focused on their own portfolios and rarely were there discussions at Cabinet about the Council's emerging financial problems. In Interviewee 12's opinion, Cabinet meetings were carefully choreographed by the (former) Leader and the small group of (former) Cabinet members. If Opposition members thought that they would be able to get answers or information from officers at Cabinet meetings outside of the documents on the table then in Interviewee 12's opinion they were being naïve. Cabinet papers are reports written by officers, but culturally they were seen very much as Cabinet member papers and officers rarely spoke about the papers or gave additional information. Interviewee 12 cited the example of General Purposes and Audit Committee, where the (former) Cabinet member for Finance and

Resources regularly spoke first and answered questions, and this prevented answers being given by officers.

- 5.7.3 Interviewee 12 was clearly of the opinion that the Council's Statutory Officers had not given the necessary information and professional advice that they should have done, for example about the level of the Council's reserves even though Interviewee 12 understood that this information was unlikely to have been well received by the (former) Leader or the (former) Cabinet member for Finance and Resources. Interviewee 12 also said that whilst some questioning by the opposition appears at times to be just for the sake of it, some of the opposition members did often raise relevant issues that were either ignored or the response was 'fudged'. The level of reserves did seem to be low compared to elsewhere and this should have been made clear in Cabinet meetings by the appropriate members, but equally the (former and current) S151 Officers were required to speak up and professionally advise Cabinet on matters like this. The budget reports were never sufficiently clear, in Interviewee 12's opinion, about the developing financial problems like the low level of reserves.
- 5.7.4 Interviewee 12 also told me that Labour Party members outside Croydon had commented that Croydon has had longstanding problems with its finances, maybe over the last 10 years, but this was never discussed at a Cabinet meeting. Interviewee 12 was clear that in their opinion the previous Cabinet had had a leadership culture that was neither open nor healthy. Only by May 2020, did Interviewee 12 and other Cabinet members start to exchange views about the way that Cabinet was being run. Interviewee 12 had really needed to know more about the financial situation so asked the (current) S151 Officer for a briefing. The (current) S151 Officer checked the request with the (former) Cabinet member for Finance and Resources who from Interviewee 12's memory was very angry and said it was disrespectful to him to make such a request and was, in effect, a breach of trust.
- 5.7.5 Interviewee 12 also stated that Cabinet as a whole was not really involved in decisions like the purchase of the Croydon Park Hotel. Cabinet was told about the idea and the potential of a £1m+p.a. income stream one week, and then shortly afterwards was told it had been purchased. The Cabinet did not discuss the proposal in detail, it was all dealt with in Interviewee 12's opinion by the (former) Cabinet member for Finance and Resources and the (former) S151 officer in late 2018. Interviewee 12 stated that due to this pattern of decision-making and lack of Cabinet involvement in such a big decision, it was not clear what level of risk assessment took place or whether any due diligence was actually done. In Interviewee 12's experience, Cabinet members who were not in the 'top group' always had to consider whether it was worth it to raise issues and risk a slap down, and too often decided that it was not worth it. Interviewee 12's own approach was to raise any concerns with the Leader in one to one meetings rather than in Group or Cabinet settings. In Interviewee 12's view the reality was that the operating environment of the Cabinet did not regard any challenge as a positive contribution – in fact, the exact opposite.
- 5.8.1 Interviewee 13 (a former and/or current member of the Cabinet or Committee Chair) told me that before the change of administration and the new Cabinet being appointed, it was clear that there had been a 'Cabinet within a Cabinet'. In Interviewee 13's opinion there had been neither collective responsibility nor accountability. There was no effective mechanism for other Cabinet members to challenge what was happening or being planned. Information was not shared and the 'cabal' in the Cabinet in Interviewee 13's description, (the (former) Leader of the Council, the (former) Cabinet member for Finance and Resources, the (former) Deputy Leader (statutory) and the (former) Cabinet member for Environment, Transport and Planning did not welcome challenge or discussion. Another problem in Interviewee 13's view was that the husband and wife combination in the Cabinet managing the Planning and Housing portfolios respectively had, in the opinion of Interviewee 13, an 'insatiable drive' to build houses and this working relationship may have led to poor governance behaviour. This has become clearer to Interviewee 13 since the

revelations in the PwC report, and also that the house building activity of Brick By Brick in their view, has been pursued without the appropriate levels of due diligence, risk management or financial management that would be expected in the safeguards and controls over the use of public money.

- 5.8.2 Interviewee 13 also expressed the view that the (former) Leader surely should have wanted to build a Cabinet of the most able people in the Labour Group, but Interviewee 13 had seen that too many members of the previous Cabinet would not, or could not, provide adequate challenge. This sometimes resulted in poor decision making; such as with the Compulsory Purchase Orders being issued to a local shopping mall, forcing owners out of their shops almost overnight in preparation for a Westfield development which years later has still not arrived. It was decisions like this in Interviewee 13's opinion that have brought the Council into disrepute.
- 5.9.1 Interviewee 14 (a former and/or current member of the Cabinet or Committee Chair) described working with the previous Cabinet and other experiences outside of Croydon Council that had provided Interviewee 14 with insights into the workings of the former Cabinet and how things are done in other councils and other parts of the public sector. Interviewee 14 told me that the experiences of the last few weeks/months had enabled a far clearer understanding of the issues the Council is facing than all of the time spent as a councillor previously. Interviewee 14 had been wracking their brain to understand how Croydon has landed up in the position it is in. How did these experienced and competent members and senior officers allow things to get to this point? In Interviewee 14's opinion it is simply inconceivable that this could have happened at other local authorities, given the way governance arrangements work there. So Interviewee 14 had been asking whether Croydon is unique or are there other Councils facing similar situations? The conclusion that Interviewee 14 had reached so far is that although other councils like Nottingham City Council have been dealing with difficult issues, the set of circumstances in Croydon does make it unique.
- 5.9.2 Interviewee 14 explained that this is based on views in regard to the way that key decisions have been made and scrutinised at Croydon. Interviewee 14's opinion is that members of the Council have been all too ready in the past to accept what they were being told without the necessary questioning and challenge. It seems that the right questions were not being asked, for example about Brick By Brick, and that members were accepting too readily the reassurances that they were being given by the (former) Leader and the (former) Cabinet member for Finance and Resources that everything was ok. Interviewee 14 described the personal shock felt at the purchase of the Croydon Park Hotel and the Colonnades, and that the Croydon Park Hotel purchase was not discussed by or with the Cabinet before it happened. Interviewee 14 had asked another member of the former Cabinet how this could have happened and had been told that if you questioned anything that the political Leadership was doing you were regarded as the 'enemy within'. Interviewee 14 does accept that central government was encouraging local authorities to look at other potential revenue streams and that Croydon actually was quite late in doing this. But in Interviewee 14's opinion a costed and affordable Asset Investment Strategy was required to make these decisions and manage these properties properly and Interviewee 14 had been stunned to find out that this Asset Investment Strategy had been formally agreed at Cabinet only after the Croydon Park Hotel purchase.
- 5.10.1 Interviewee 15 (a former and/or current member of the Cabinet or Committee Chair) told me that the operating style of the previous Cabinet had been very strange. In Interviewee 15's opinion, it became clear very quickly that the (former) Cabinet member for Finance and Resources was running things and that Cabinet members were expected to deal just with their portfolio and not be involved in decisions outside their portfolio. Interviewee 15 felt that the (former) Cabinet member for Finance and Resources had kept Interviewee 15 in the dark about the Council's finances even though he said he would brief Interviewee 15 thoroughly. But at the end they had

only chatted very generally. Interviewee 15 explained their concerns about the budget for their portfolio and the need for a detailed briefing arose from the fact there had been no handover from the previous portfolio holder. Interviewee 15 told me they had been told by the Executive Director for their portfolio that the service budget was £14m adrift and though the Executive Director was very reassuring, talking about the way savings that could be made to bridge the gap, Interviewee 15 was still very concerned and asked to meet with the (former) Leader to discuss this.

5.10.2 While Interviewee 15 was in the (former) Leader's office, the (former) Leader telephoned the (former) Cabinet member for Finance and Resources to tell him what Interviewee 15 had just said about the financial shortfall for that portfolio. Interviewee 15 said that it was possible to clearly hear the (former) Cabinet member for Finance and Resources on the other end of the phone shouting at the (former) Leader; 'I told Directors not to frighten their portfolio holder' and the (former) Leader then told Interviewee 15 that the (former) Cabinet member for Finance and Resources had confirmed that there was not a problem.

5.10.3 In Interviewee 15's opinion there was no reliable information about the Council's finances being shared honestly with Cabinet members. Interviewee 15 now regrets not pushing harder on this issue but personal matters and the day to day Cabinet responsibility of a huge portfolio was found to be all consuming. So the Directorate continued to do its best to control expenditure but then at one Cabinet meeting the (former) Leader suddenly said in an angry tone that the Council would not be taken over by Commissioners. This was the first time this had even been mentioned in Interviewee 15's presence. This was very puzzling, if everything was ok, why had there been the establishment of the Finance Review Panel and the appointment of the independent Finance Consultant? Interviewee 15 was aware that some very difficult questions were being asked by other Cabinet members and in Interviewee 15's opinion some very aggressive responses were being given to them, but there were no clear answers from the (former) Leader or from the (former) Cabinet member for Finance and Resources as to what was happening.

5.10.4 Interviewee 15 was of the opinion that if any member of the Labour Group tackled the (former) Leader and/or the (former) Cabinet member for Finance and Resources about the way the Council's finances were being managed they were very badly dealt with. Interviewee 15 believed that members of the Group including Cabinet members have paid the price for challenging them. Interviewee 15 said to me that there is a misconception that the (former) Cabinet member for Finance and Resources was running things. In Interviewee 15's opinion he very much did the (former) Leader's bidding and also in Interviewee 15's opinion the (former) Leader's style was always to get someone else to do his 'dirty work' so that he could show 'a clean pair of hands'.

5.11.1 Interviewee 16 (a former and/or current member of the Cabinet or Committee Chair) told me about the personal excitement that the initiatives the Council was considering had generated. However, the kind of investments that the Council has made recently in Interviewee 16's view has made it seem more like a commercial business than a local authority. It has also proved very hard in Interviewee 16's experience to question the Council's Leadership about these initiatives. Not all of the Cabinet was part of the decision-making process about these initiatives so a number of them were unclear about what they were for. Up until August 2020, Interviewee 16 had not been made aware of the serious financial difficulties facing the Council. When any member of the Cabinet asked questions about the Council's finances, the (former) Leader and the (former) Cabinet member for Finance and Resources always said that there was no problem and that everything was under control. It was only in August 2020 that Interviewee 16 really understood the scale of the problems. Interviewee 16 explained that Cabinet members knew that the Finance Review Panel had been set up earlier in the year but were told that was to help manage the impact of COVID on the Council's finances. Initiatives like Brick By Brick were progressed because certain Cabinet members were very committed to do this and determined they should happen. There was a lot of

opposition to much of this in the community and ward councillors were unhappy but when they asked questions of the political Leadership, they were just shut down.

- 5.11.2 In Interviewee 16's view the Council has not worked with the community in the way it should have done and it should not have pursued many of these investments and borrowed so much money to fund Brick By Brick in particular. The Council should have relied much more on the (former) Chief Executive and the (current) Executive Director for Place bringing external investment to the Borough, something in Interviewee 16's view they had been very successful in doing in the past, instead of setting up a development company entirely funded by the Council.
- 5.11.3 In Interviewee 16's view there has been a lot of opposition to what the Council has done from the business community in Croydon as well. They had needed financial support and had objected strongly to the Council spending £30m to purchase the Croydon Park Hotel, but the (former) Cabinet member for Finance and Resources, in Interviewee 16's opinion, had refused to talk with the businesses to explain what the Council was doing. Interviewee 16 believes that there were four Cabinet members who were very much the decision makers and the rest of the Cabinet were not really involved in many of these decisions. In Interviewee 16's personal view, it was the (former) Cabinet member for Finance and Resources who always seemed to be the one who fixed things and the (former) Leader seemed very happy for him to do this and clearly trusted him. There had been a move within the Labour Group to get the (former) Cabinet member for Finance and Resources and the (former) Leader to resign before they stepped down last autumn but they had kept saying that there was no problem with the Council's finances.
- 5.12.1 Interviewee 17 (a former and/or current member of the Cabinet or Committee Chair) - told me that Croydon has been coping with underfunding and the resulting overspend on certain budgets for many years. In Interviewee 17's view Croydon is an area with a lot of need and much of the overspending had resulted from the failure to control spending on demand-led services like Children's and Adult Social Care. During Interviewee 17's time on the Council, the Finance Team had given a number of presentations that showed clearly the challenges the Council has been facing with its underfunding and low reserves compared with neighbouring authorities like Lambeth. Interviewee 17 could remember the previous Conservative Administration had run a 'fair funding' campaign on this issue. Interviewee 17 also commented that the Report in the Public Interest had put the issue back to the Council that there had been insufficient challenge by elected members about the Council's financial situation including by Cabinet members. In Interviewee 17's opinion this had been accepted by the Cabinet and Labour Group. Interviewee 17's view is that there had been a tendency for most Cabinet members to focus on their own portfolios and concentrate on the financial issues within them. Presentations and reports to Cabinet members gave the impression that the financial issues facing the Council were under control. The (former) Cabinet member for Finance and Resources in Interviewee 17's opinion was well versed on the issues.
- 5.12.2 On the officer side, the (former) S151 Officer was a very competent Finance Director and in Interviewee 17's opinion, a font of knowledge who was a very strong presence along with the (former) Cabinet member for Finance and Resources. His knowledge was a great loss and it would seem that systems were not put in place to ensure that this knowledge was carried forward. Interviewee 17 told me that there was only one occasion that came to mind when the (former) Chief Executive had challenged the Labour Group's manifesto commitments and this was around bringing out-sourced care staff back and the cost relating to this. The Ofsted 'inadequate' judgement in 2017 had been a real shock and concerns were raised around the professional advice that officers had given. From Interviewee 17's perspective Croydon has always been a member-led Council when it comes to policies and the administration had a strong vision and an ambitious portfolio to deliver in its second term. The question that now has arisen in the RIPI and other reports is whether it could be afforded and why members had not asked for more information and

challenged more. Interviewee 17's answer to that is that maybe members could and should have challenged more but they were reliant on the information being put before them.

- 5.13.1 Interviewee 18 (a former and/or current member of the Cabinet or Committee Chair) confirmed that the Cabinet did have briefings about the Council's financial position, that there were papers to Cabinet about this and that there were Labour Group and Cabinet 'away days' at which the (former) Cabinet member for Finance and Resources and the (former and /or current) S151 Officer set out the situation with slide shows etc. The theme was always that things might be difficult, that the Council continued to be underfunded, that the Ofsted judgement had skewed expenditure and latterly that COVID had made things even more difficult – but always the conclusion was that things were under control and were being managed. As elected members they were inevitably reliant on officers to give the right and relevant information.
- 5.13.2 Interviewee 18 had been very disappointed to hear at a meeting of General Purposes and Audit Committee from the Finance Consultant that members had not, in his opinion been provided with the correct or adequate financial picture to make fully informed decisions. Hence, it was not always clear what questions needed to be asked because members had not been given the information that would have enabled them to ask those questions. Interviewee 18 told me that after the (former) Chief Executive had left, it became clear that she did not help the situation because in Interviewee 18's opinion she allegedly controlled the information that was provided to members and restricted what senior officers were allowed to tell or discuss with members. In Interviewee 18's view the Cabinet had relied on the (former) Cabinet member for Finance and Resources and needed to trust that it was being given the right information. Interviewee 18 expressed the view that it is possible that the (former) Cabinet member for Finance and Resources also only had a restricted view of the situation. In Interviewee 18's opinion there was no '*inner Cabinet*', no '*gang of four*', no '*inner cabal*' as has been alleged. It has been alleged that Interviewee 18 was a member of this '*gang*' and as such Interviewee 18 was able to confirm this description was incorrect. In Interviewee 18's opinion the (former) Cabinet member for Finance and Resources had been appointed by the (former) Leader as the Finance lead on the Cabinet, and was very competent in that role so was trusted by all the Cabinet to deal effectively with the Council's finances.
- 5.14 Interviewee 19 (a former and/or current member of the Cabinet or Committee Chair) said that Croydon's problems are deep seated and longstanding, deriving from the 'Strong Leader' model of governance that came into effect in 2010 under the Conservative Leader at that time. When Labour took control in 2014 they did not change this governance model and have continued with a Strong Leader model ever since. However, in Interviewee 19's view, the previous Leader did not like conflict so his way of working was to stifle debate in Cabinet, and to remove any opposition by dropping anyone from the Cabinet - often remotely - who openly challenged or questioned him, so inevitably those who wanted to stay on the Cabinet to deliver their portfolio kept quiet and kept their heads down. It is easy for elected members now to blame the (former) Chief Executive for things that have gone wrong. But the reality, for Interviewee 19, was that influential Cabinet members refused to face facts and take the necessary action to address the Council's deteriorating financial situation. Interviewee 19 was clear that it is too easy just to blame the (former) Chief Executive for everything.
- 5.15.1 Interviewee 20 (a member of the Opposition Group) told me that they had been given briefings about the financial situation but there was not enough information and not frequently enough. The RIPI said that there was insufficient scrutiny and challenge by the Opposition but that conclusion was based on reading the inaccurate minutes of meetings that did not properly reflect what had actually happened. In Interviewee 20's view the extent of the challenge by Opposition members about the sustainability of the Council's finances had been understated in the RIPI. Interviewee 20 said that every Cabinet meeting since February 2020 had seen Opposition members ask questions about the sustainability of the Council's finances, the levels of borrowing etc., and the response

from the (former) Leader of the Council had been to attack Interviewee 20 personally, claiming that these questions were scaremongering and so on.

- 5.15.2 In Interviewee 20's opinion, this was the traditional response that the Opposition got from members of the Administration, so officers were naturally wary about responding 'helpfully' when the Leadership had set the tone. Interviewee 20 said that it was interesting to observe that in the last six years of attending many Cabinet meetings no Cabinet member had questioned what was said by another Cabinet member. The only questioning of Cabinet members in Interviewee 20's experience was by Opposition councillors. Interviewee 20 did note however that there is now a very different tone at Cabinet meetings. In Interviewee 20's opinion, the (current) Leader is much more polite and courteous, more questions are being asked but Interviewee 20 did not think that it added up to serious scrutiny, and remains to be convinced that there has been any significant change in the governance and political leadership culture.
- 5.16 Interviewee 21 (a member of the Executive Leadership Team) told me that Executive Directors were not really expected to speak or to contribute at Cabinet meetings. In Interviewee 21's experience, the Croydon culture is to regard these very much as member meetings which officers attend and observe. It was Interviewee 21's opinion that this applied to the (former) Chief Executive as well as to current Executive Directors. Interviewee 21 also said that the (former) Cabinet member for Finance and Resources in particular did not regularly ask officers including the (current or former) S151 Officers to respond to questions about the Council's finances from Cabinet members or Opposition members.
- 5.17 Interviewee 9 (external to the Council) had observed the overwhelming control and influence that the (former) Cabinet Member for Finance and Resources had over the Council's financial matters. Interviewee 9 had witnessed the (former) Cabinet member for Finance and Resources telling his Cabinet colleagues that he would sort out any problems, so he effectively stopped them and officers from taking any responsibility for managing their budgets and related issues. Interviewee 9 gave an example in regard to the debts of one of the companies that the Council had set up. These debts were sold recently to a bank selected through a very unclear process, but then those debts came back into the Council's accounts as 'income'. In Interviewee 9's professional opinion this was highly dubious as an accounting practice and possibly double-counting, but as the (former) Cabinet member for Finance and Resources was in charge of the arrangements for this, no officer had challenged it.
- 5.18 Interviewee 47 (external to the Council) told me that it had been said that the Cabinet did not work well as a Team, with the (former) Leader leaving portfolio holders very much to do their own thing within their portfolio and not clarifying overall priorities. This left officers with far too many priorities to try to deliver.
- 5.19 Interviewee 22 (external to the Council) said that it was clear in the opinion of the Rapid Review Team and its report that the Council has been '*poorly led and poorly managed*' for some time, and that is why it is in this serious situation. Interviewee 22 told me that there are accounts of how decision-making about significant matters were 'corralled' to four Cabinet members, and that any proposal required the support of all these four Cabinet members. Interviewee 22 quoted as an example of the direct link to a Cabinet Member, that they had been told if any Council officers raised any issues or concerns about Brick By Brick, the Brick By Brick Chief Executive would take it up directly with the (former) Cabinet Member for Finance and Resources and the (former) Deputy Leader who then got on to the (former) Leader who then gave instructions to the officers to '*back off and he would sort it out*'.
- 5.20 The report of the Rapid Review Team concluded that:

*'LB Croydon is a Labour controlled Council and up until recently, had a long-standing Council leader who is a highly experienced local politician. The Council adopted a strong leader and Cabinet model for the Governance of the Council. It was said to us by a number of members from both parties and senior officers that the strong Leader and Cabinet model allowed the former Leader to create an inner circle of a small number of Cabinet members, who have been very controlling in their management of the Council and its finances and championed the cause of the Council's commercial activities including Brick by Brick. There was a clear desire to pursue an ambitious growth agenda for Croydon and when elements of this growth could not be realised, rather than increased caution, it seems there was a continued desire to accentuate the positive. We heard many accounts of officers being asked to re-word Cabinet reports to present the most favourable picture. It is evident that the tone of many financial reports to Cabinet do not accurately reflect the seriousness of the Council's financial position. Many Council officers and members from both sides of the Chamber have stated their shock at the revelations of the Grant Thornton Public Interest Report.*

*The Labour Group has a large majority over the Conservative opposition, but it appears to be a healthy opposition, keen to scrutinise and hold the majority group to account. We observed 2 full Council meetings and two Cabinet meetings, and the Labour Group has appeared respectful and inclusive in working with the opposition and allowing itself to be held to account. The Cabinet meeting was characterised by individual Cabinet members leading on introducing and answering questions on their reports and the Shadow Cabinet is present. Exchanges appeared robust, but respectful. All that said, we were also told that the tone of these meetings had changed in recent times.'*

## The Executive Leadership Team

6.1 Executive Directors at LB Croydon are required to perform a managerial leadership role. While they are responsible for the leadership of specific functional directors and their teams, they are also defined through their corporate contribution to the Council's senior management team (known as the Executive Leadership Team, or ELT). Local Councils are corporate entities and not just a bundle of separate functions or services. The most senior managers are required to ensure both the effective and efficient delivery of specific Council functions, as well as ensure the proper strategic coordination across the entire range of these functions. For at this level, managers are employed to be more than 'heads of profession', subject experts, or functional managers. At the core of their purpose is the provision of effective management leadership for the whole organisation. Indeed, this is centrally expressed in each of the respective job descriptions and role responsibilities of the Council's Executive Directors. The phrasing used in their core job role is:

*'to provide inspiring and effective leadership, and drive performance at corporate and departmental levels to deliver the Council's strategies and key outcomes.'*

Of course, each individual post will have a different mix of functional responsibilities and corporate management responsibilities. Some posts will hold statutory responsibilities to the body corporate. These include the Head of Paid Service, the Chief Financial Officer (or Section 151 Officer); and the Monitoring Officer. Other senior posts on ELT may not hold these formal responsibilities to the body corporate but nonetheless their responsibilities include ensuring the corporate effectiveness of the Council's functions and services. In particular, the ELT is expected to work corporately to ensure the Council's actions are lawful, that there is overall budget control and that actions are taken to limit the impact of resource reductions on front line services.

6.2 Interviewee 10 (a former and/or current member of the Cabinet or Committee Chair) said that since the change in the Leader of the Council has occurred, the information that has been revealed about what has been happening in the Executive Leadership Team has been very surprising.

6.3 Interviewee 10 told me that conversations had been held in the past with the (former) Chief Executive about the Executive Leadership Team and from Interviewee 10's memory the (former) Chief Executive always used to refer to the way they worked as 'one Team', in direct contrast to how the (former) Chief Executive had claimed to the way the Cabinet worked and that there was a sense of collaboration and shared leadership in ELT. Interviewee 10 told me that there are now very different descriptions about the way ELT actually worked in the past and that views had been expressed to Interviewee 10 that the (former) Chief Executive had assembled a Team of weak Directors who would 'toe the line'. This description of the former ELT was communicated to Interviewee 10 as a view held by the (former) Chief Executive. Interviewee 10 had previously challenged the performance of the (current) Executive Director for Resources and Monitoring Officer, but the (former) Chief Executive had not accepted the reservations Interviewee 10 had expressed and so Interviewee 10 had not pushed this issue any further.

6.4 Interviewee 10 also said that there are now accounts from junior staff through webinars about the (former) Chief Executive's inappropriate conduct, such as shouting and swearing. Interviewee 10 expressed a clear opinion that it is really important that the Council's staff have a relationship with the political Leadership, and to see and hear the political Leadership talking about the value it places on the Council's staff and how important it is that staff are well managed. Interviewee 10 described meeting with the (former) Chief Executive on a number of occasions and had personally found her very unpredictable. What was very clear to Interviewee 10 was that the (former) Chief Executive did not like challenge or questioning from anyone, and that she had become very frustrated with the regular interventions in management matters by the (former) Cabinet member

for Finance and Resources. Interviewee 10's view is that the (former) Chief Executive had a distinct 'command and control style of management' and was good in a crisis and had showed this in her early years with the Council. The (former) Chief Executive had often said to Interviewee 10 that she had noticed a distinct change in the way members saw their roles following the 2018 local elections and in Interviewee 10's opinion this was probably when things started to go wrong in the working relationship between the (former) Chief Executive and the (former) Leader.

- 6.5 Interviewee 12 (a former and/or current member of the Cabinet or Committee Chair) told me that there had been opposition in Cabinet to the (former) Leader's proposal to appoint the (current) Executive Director of Place as Interim Chief Executive when the (former) Chief Executive left in August 2020. Interviewee 12 expressed the personal view that there was already weak senior officer Leadership and that promoting someone who had no experience of acting as a Chief Executive was not the right course of action to follow. Interviewee 12 believed that the Council needed to bring in an Interim Chief Executive with experience of being a Chief Executive and it is good that that was what has finally happened.
- 6.6 Interviewee 23 (a former and/or current member of the Cabinet or Committee Chair) said that the Council's Executive Leadership Team should be able to demonstrate a willingness to challenge members and each other outside of their allocated Directorates. In Interviewee 23's view the Council needs skilled professionals who it can trust and who can engage with members in policy development discussions, planning for the future beyond the Medium Term Financial Strategy, scanning the horizon and shaping Croydon's future. Interviewee 23 went on to say that the Council needs officers who are corporate by instinct and who have broader experience of what works in other local authorities and that it is not what, in Interviewee 23's opinion, the current ELT looks like. The ELT should also be entirely focused in trying to fix things so that members can think about the long-term future of the Borough. Interviewee 23 said that there needs to be a permanent Chief Executive in place, and the Council has to stop looking back and should focus on the future.
- 6.7 Interviewee 16 (a former and/or current member of the Cabinet or Committee Chair) told me that in their opinion the (former) Chief Executive had been a strong Chief Executive and seemed a very different person from when she had been an Executive Director. It seemed to Interviewee 16 that the (former) Chief Executive had been running the Council without any involvement of the rest of ELT. In Interviewee 16's opinion, the (former) Chief Executive had promoted a culture in which officers were discouraged from sharing any information with councillors, and she seemed to have little or no respect for Cabinet members because meetings with Interviewee 16 that had been arranged were often cancelled at short notice. In all the time that Interviewee 16 had been a Cabinet member, only one 'one to one' meeting with the (former) Chief Executive had been held. In Interviewee 16's opinion, it was clear that the (former) Chief Executive had assembled a Team around her who would not challenge her and so she had full control of ELT. Interviewee 16's opinion was also that it seemed that the (former) Chief Executive was very resistant to challenge or questioning by anyone, even Cabinet members. Even when the (former) S151 Officer had been required to brief the Cabinet on the financial situation he seemed very reluctant to open up about the problems. [REDACTED]
- 6.8 Interviewee 24 (a former and/or current member of the Cabinet or Committee Chair) said in their opinion ELT did not act as a Team when the (former) Chief Executive was in post and sadly that is still the case. Interviewee 24 has seen no evidence of ELT supporting each other, individual members of ELT still do not speak up and there is no clarity about corporate or collaborative working, and that prevents it from being an effective Team. So in Interviewee 24's opinion, ELT is weak and lacking in influence and a number of its members are just not worth the huge salaries they are being paid. Interviewee 24 also said that although the Council is now trying desperately to address its financial problems in Interviewee 24's opinion there is no evidence that the ELT is

being of any real help in this process. Interviewee 24 also said that the wisdom of promoting the (current) S151 Officer to that post when the (former) S151 Officer left was questionable. Interviewee 24 expressed the personal view that the (current) S151 Officer was not experienced enough nor had possessed, in Interviewee 24's judgement, the necessary presence to deal with the influence exerted on the Council's finances by a very proactive and hands-on (former) Cabinet member for Finance and Resources.

- 6.9 Interviewee 1 (a former and/or current member of the Cabinet or Committee Chair) said that the relationship between the (former) Chief Executive and the rest of ELT seemed to break down completely by mid-2020, and it was the opinion of Interviewee 1 that the (former) Executive Director of Children Families and Education left as a very unhappy man. Other members of ELT had been talking to Interviewee 1 about the (former) Chief Executive's management style. Interviewee 1 had been made aware of the (former) Chief Executive's management style towards members of ELT that was described to me by Interviewee 1 as a 'strong and controlling style'. But until the (former) Executive Director had spoken to Interviewee 1 about this, nobody had been prepared to go on the record. With regards to more junior members of staff, again no formal reports were made to Interviewee 1, but informal reports of the (former) Chief Executive's apparent bullying attitude towards junior members of staff appeared to be growing, particularly over the last 12 months including allegedly shouting at the Council's external auditors. This behaviour, taken alongside the failure of ELT as led by the (former) Chief Executive to generate any significant in-year savings and leaving the (current) S151 Officer rightly in Interviewee 1's opinion, on the brink of issuing a S114 Notice, had made it clear to Interviewee 1 that a change of Chief Executive was urgently required.
- 6.10 Interviewee 11 (a former and/or current member of the Cabinet or Committee Chair) said that quite a lot of senior officers left the Council after 2018 following a period of relative stability since 2014, and it had seemed to the Cabinet that some of those were leaving because of the (former) Chief Executive. In Interviewee 11's view anyone who the (former) Chief Executive considered was being over-helpful to members or speaking out, raising issues or challenging her was not welcome. Interviewee 11 considered that the (former) Executive Director for Children, Families and Education had been excellent but in Interviewee 11's view he had challenged the (former) Chief Executive and was a case in point. Interviewee 11 said in their view that a number of people had been driven out by the (former) Chief Executive if they weren't compliant or if they spoke out. Interviewee 11 commented that it is interesting that neither the (current) S151 Officer nor the (current) Monitoring Officer had spoken out despite their statutory responsibilities and powers that they had. Interviewee 11 raised the question with me whether they '*had they been prevented from doing so?*'
- 6.11 Interviewee 11 said that the political Leadership did try to get the (former) Chief Executive to introduce programmes of support for new Executive Directors and Directors to help them take on a wider more corporate role but this does not seem to have happened. Interviewee 11 said that it must be acknowledged that on several occasions an internal candidate was promoted and, without the right support, this would make it difficult for them to carry out their task, particularly in the context of a very powerful Chief Executive. In the case of the (current) Section 151 Officer, in Interviewee 11's view, her line manager does not appear to have provided the right level of support and protection for her. It is clear to Interviewee 11 that the need for training, mentoring etc. was not recognised. For example, it would be assumed that anyone being appointed by the Council to sit on a company Board would be provided with appropriate training and support but it is now clear from recent events that this was not the case.
- 6.12 Interviewee 18 (a former and/or current member of the Cabinet or Committee Chair) said that in their view the (former) Chief Executive was an interesting character but did not seem to provide much positive Leadership to members of the Executive Leadership Team and had relied instead

on dominating them. Interviewee 18 said that it was not clear if the (former) Chief Executive had deliberately appointed a Team that would be compliant and that would not challenge her, but it has been suggested to Interviewee 18 that the ELT had become weakened after the Council lost some very good senior officers over recent years. Whilst members were involved in those appointment processes they would have relied on internal and external advice about who were the best candidates for these top jobs.

6.13 Interviewee 4 (a member of the Opposition Group) expressed the view that it was quite difficult to tell whether the (former) Chief Executive and the (former) Leader and Cabinet were in tune with each other. Interviewee 4 considered the (former) Chief Executive to be very 'political'. Interviewee 4 did not think that they shared a 'world view' and only once had Interviewee 4 felt they had had information and insights that were helpful and actually had felt at the time that that had been inadvertent and unintended. For the Opposition to play its role there has to be an acceptance that the officer corps has to work with the Opposition, but that was just not the case. Interviewee 4 knew that there was a lot going on that there should have been briefings about, but usually only learned about what was happening when the Council's Press Releases were circulated. Interviewee 4 felt there had been an irony in each Chief Executive in succession saying that all Croydon's problems and its culture were the fault of his or her predecessor and that they would take a very different course. That is what the (former) Chief Executive had said to Interviewee 4 about her predecessor Chief Executive even though she had worked as one of his Executive Directors.

6.14 Interviewee 4 feels that as each successive Chief Executive has been appointed the notion that they were obliged to work on behalf of the whole Council rather than just the administration has weakened each time. The (former) Leader had failed to bring in a Chief Executive with a wider view of the world based on experience at a senior level of other organisations, and this had exacerbated Croydon's problems. The (former) Leader was a 'big picture' person with neither grasp nor understanding of the detail and in Interviewee 4's view, his response to any challenge was to launch a personal attack on any questioner rather than addressing the issues in question. In Interviewee 4's view the (former) Leader was supported in that by the (former) Chief Executive who herself was a 'big picture' person with a very strong view about what she wanted the Council to do. Interviewee 4 believes that she and the (former) Leader between them created and fostered a culture whereby it was better to try to work round problems and hope for the best rather than tackling them head on, [REDACTED]. Interviewee 4 said that the current ELT that had been recruited by the (former) Leader and (former) Chief Executive in their personal opinion, was the worst ELT that Croydon has ever had, with a number of individuals in roles for which they did not have the background or experience which made it difficult for them to carry out the key roles to which they had been appointed.

6.15 Interviewee 20 (a member of the Opposition Group) said that there had been no actual observation of the (former) Chief Executive ever stopping the (current) S151 Officer or other (current) Executive Directors speaking up, but it was known to Interviewee 20 that there was some discontent amongst the ELT on this point. Interviewee 20 believes that the (former) S151 Officer left because he felt that he was not allowed to do the right things, and Interviewee 20 has a lot of sympathy for the (current) S151 Officer as in Interviewee 20's opinion she has been put into a very challenging situation without the necessary experience. In Interviewee 20's view there was definitely a pattern of the (former) Chief Executive promoting relatively junior staff to much more senior positions and it was clear that she did not want people at the top table who felt able to stand up and be counted. Interviewee 20's opinion was that previously the Council was being run by a powerful (former) Chief Executive with a compliant (current) Monitoring Officer and an inexperienced (current) S151 Officer supporting the political Leadership without challenge.

- 6.16 Interviewee 3 (external to the Council) said that the members of ELT had all been member appointments. In Interviewee 3's opinion they were not selected because they were compliant and would not challenge or question as has been inferred. As an example Interviewee 3 said that the (current) Executive Director for Place had been very credible at interview and had a good track record in other London boroughs. Another example was given by Interviewee 3 of the (current) Executive Director for Resources, who had been appointed not only as a competent lawyer and Monitoring Officer but because the most important issue the Council was dealing with at the time of that appointment was the relationship with members and the Governance Review process. Interviewee 3 also explained that these appointments were also part of a deliberate strategy to change the organisational culture at Croydon and an internal appointment like this sent a powerful message about nurturing talent in Croydon and opened up opportunities for other staff. Interviewee 3 said that the Council had invested heavily in Leadership development and culture change that had resulted in positive staff surveys. Interviewee 3 accepted that there were serious capacity issues in the Finance Team but that the (current) S151 Officer in Interviewee 3's opinion had done well under extremely challenging circumstances and has grown in the role since she was appointed. The additional support from the Chair of the Finance Review Panel and the independent Finance Consultant has proven to be constructive. Interviewee 3 rejected the view that the ELT was composed of compliant individuals appointed or promoted for the wrong reasons. Interviewee 3's personal opinion was that this was an insult to ELT members, their capabilities and to Interviewee 3.
- 6.17 Interviewee 21 (a member of the Executive Leadership Team) told me that inevitably, because of the (former) Chief Executive's passion for regeneration and growth, this had featured more at ELT meetings than other issues like Children's Services, but of course the adverse Ofsted report changed that somewhat. However, Interviewee 21 could not recall any detailed reports raising concerns about the Council's financial situation coming to ELT in the past, and it is only since the (current) S151 Officer was appointed that ELT had even been receiving and discussing some reports on the Council's finances. The (former) Chief Executive had commissioned Impower late in 2019 to help the Council to develop actions to address the financial issues that were by then emerging, and they produced some useful reports proposing a range of actions based on an overall strategy. However, as Interviewee 21 explained, it was left to the Directorates to implement these actions. In the early summer of 2020, ELT became more aware of and concerned about the Council's financial problems. Interviewee 21 had been aware of but did not see the Grant Thornton letter to the (former) Chief Executive in April 2020 but knew that the Council's external auditors had serious concerns.
- 6.18 The Council had still been dealing with the impact of austerity like all other Councils when COVID hit, and Croydon was one of the worst affected Boroughs. The working assumption of the (former) Chief Executive had been that the Government would cover all of the costs of dealing with COVID but that has not been the case, and that has made the Council's financial problems even worse. Because membership of the Executive Leadership Team has changed a lot over the four years, in Interviewee 21's view it never really had the opportunity to gel as a Team. The opinion of Interviewee 21 is that the (former) Chief Executive was a big personality and was always very much 'in the room' so inevitably dominated the meetings. It was clear to Interviewee 21 that the (former) Chief Executive had 'good days' and 'bad days', and it was not the best tactic to question or challenge her on one of her bad days. Interviewee 21 had never personally felt shut down or prevented from speaking at ELT meetings but is sure that some other people may feel that was the case for them. Interviewee 21 did have disagreements with the (former) Chief Executive but these were always dealt with outside ELT meetings. Interviewee 21 was aware that some people thought that the (former) Chief Executive's behaviour towards some people, including quite junior officers, amounted to bullying but this was never witnessed or experienced by Interviewee 21.

- 6.19 Interviewee 25 (a member of the Executive Leadership Team) told me that things began to come to light shortly after the (former) S151 Officer left and ELT began to take a real interest in the Council's financial situation. The first quarter financial report in spring 2019 was the first occasion Interviewee 25 could recall when ELT really discussed the situation as prior to that the (former) S151 Officer had kept things very close to his chest. Interviewee 25 said it was clear that the (former) Chief Executive could see that there was a growing emergency and that this needed to be dealt with at pace. Later that year each ELT member was given responsibility to lead on a specific piece of work including improving the weaknesses in the Council's corporate systems such as, social care overspends, payments, income and debt. That was when the (former) Chief Executive brought in Impower and others to help ELT tackle a range of issues about the budget. Members of the Corporate Leadership Team (CLT) were also given responsibility to bring their thoughts and ideas for dealing with the situation to ELT. There was loads of activity. They were called 'sprint' sessions. From then on reports came to ELT on a regular basis and issues such as Directorate overspending were being dealt with by ELT. There was a collaborative approach to the issues by ELT and there was freedom to express views. Interviewee 25 does not remember the (former) Chief Executive shutting people down or refusing to listen and in Interviewee 25's opinion, ELT members were able to challenge and question. Interviewee 25 said that the 15% staff reduction initiative was a direct result of an ELT discussion about the budget and there were similar actions that resulted from ELT discussions.
- 6.20 Interviewee 26 (a member of the Executive Leadership Team) said that ELT had known from the start that the Council had serious financial difficulties with low reserves, poor government funding etc. but ELT had not been directly involved in any discussions about initiatives like Brick By Brick, nor in buying a hotel. Interviewee 26 recalled that the (former) Cabinet member for Finance and Resources had wanted to buy an airport hangar which caused some amusement when ELT discussed this. Brick By Brick already existed when Interviewee 26 started in role but Interviewee 26 had limited knowledge of what it did and what was known by Interviewee 26 came mainly from questions at Cabinet or Council by Opposition members. In Interviewee 26's view, ELT was not really involved in these matters and Interviewee 26 had personally found out about the purchase of the Croydon Park Hotel by reading about it in the Metro. Interviewee 26 believes that many of the initiatives like Brick By Brick were set up with the best of intentions, such as to increase affordable housing in the Borough. Prior to the time of the (former) Chief Executive it seems that Croydon had what might be described as a more 'traditional' Chief Executive, and the (former) Chief Executive clearly wanted to change Croydon's approach and so initiatives like Brick By Brick were set up.
- 6.21 Interviewee 26 recounted an ELT away day when it had been discussed whether ELT was 'sighted' enough as a corporate Management Team on matters such as the papers going to Cabinet and whether they should have been considered in advance by ELT as there was a feeling by ELT members that the Council was 'going too far'. Interviewee 26 had worked for many Chief Executives and it seemed to Interviewee 26 that they fall into three categories – those with a finance background, those with a 'people' background and those with a regeneration background. It had always been easier for Interviewee 26 to engage with a Chief Executive with a 'people' background and Interviewee 26 had worked hard with the (former) Chief Executive who had a regeneration background to help her understand other Directorate's services and issues. There were also problems with the corporate systems that Interviewee 26 needed to get her to appreciate. Interviewee 26 described learning quickly that it was not the best thing to challenge or question the (former) Chief Executive in a setting like an ELT meeting and that it was more productive to do this on a one to one basis. In Interviewee 26's view it was correct that the (former) Chief Executive sometimes challenged and criticised people in meetings and it had always felt uncomfortable, although this was not unique to this Chief Executive, but there was clearly a reluctance for anyone to challenge her behaviour in an ELT setting. Interviewee 26 said that there

had been a strong relationship between the (former) Chief Executive and the (former) S151 Officer and other ELT members knew that they used to meet over a coffee before the start of the day. Interviewee 26 suspects that the financial problems facing the Council were discussed between the two of them on those occasions as there had been little discussion about things like the purchasing of hotels and shopping centres. In Interviewee 26's time on ELT and finances were only discussed in relation to departmental spending.

- 6.22 Interviewee 27 (a member of the Executive Leadership Team) described working previously in senior roles in a number of local authorities and had always been prepared to challenge and question constructively. Interviewee 27 described having a good understanding of what good governance looks like and understanding the roles that need to be played by a S151 Officer and Monitoring Officer in ensuring good governance. Interviewee 27 had worked previously for Chief Executives with finance backgrounds and policy backgrounds but the (former) Chief Executive was very different. She was very much a 'lightbulb' person with strong views about what she wanted to happen, so what she said at ELT meetings was definitive and not negotiable and ELT members were expected to accept her decisions and not challenge. But then she would move on to the next bright idea and was not interested in what was happening with the previous initiatives. Interviewee 27 described making an attempt to get some structure into what ELT should be managing and brought the administration's manifesto and the Council's Corporate Plan to ELT to discuss the extent to which there was compliance between the two. In Interviewee 27's view, the (former) Chief Executive was simply not interested and ignored the attempt to get a structured approach at ELT. Interviewee 27 had supported the Equalities Peer Review coming to ELT and the proposal that it be used to rethink Croydon's approach to Equalities. But in Interviewee 27's view, the (former) Chief Executive had not liked what the Review said and threw it out. It became clear to Interviewee 27 as time went on that the (former) Chief Executive did not like Interviewee 27's style or approach.
- 6.23 Interviewee 7 (a member of the Executive Leadership Team) said that the people that you need at the top table as Executive Directors in a difficult place like Croydon have to be particularly smart, tough and 'Machiavellian' in their approach. This applies particularly to the statutory roles of Monitoring Officer and S151 Officer and from what Interviewee 7 had seen in Croydon, the skills, experience and political acumen of the people at the top table were insufficient to the challenges they faced. With all that has happened with the Council's financial difficulties and the problems with big regeneration projects, the core business of the Council around services like Children's and Adult's Services had been seriously neglected. The Improvement Plan that the Council has agreed needs senior management of the highest calibre to ensure delivery, and Interviewee 7 believes that there need to be changes to ELT to ensure that is the case.
- 6.24 Interviewee 28 (a member of the Executive Leadership Team) said that it appears that most of the ELT members are lacking in confidence. In Interviewee 28's view they are extremely well- paid, but they do not appear to add much value to the change agenda currently, as quite understandably they are preoccupied at the moment with their personal futures. In Interviewee 28's opinion, it seems that this is a group of people who have not yet really found their voices that may be a legacy of the way the (former) Chief Executive managed them. At their level, and given how much they are paid, Interviewee 28 has been surprised at how much direction they appear to be asking for and Interviewee 28 has had to tell these very senior people for example what message to give to their own staff about the situation at the Council. Interviewee 28's personal conclusion from many years of working at senior corporate levels is that most ELT members at Croydon appear to be over-promoted and lacking in the necessary competence and experience to perform at the strategic level. Interviewee 28's view with regards to where the Council finds itself is that there is no excuse when you reach this level in an organisation to be neglectful of the need to apply the Nolan principles nor to claim a lack of understanding and commitment to what corporate and collaborative working as a Team means in practice. Interviewee 28 spoke about a number of

accounts of the way that the (former) Chief Executive appears to have bullied and intimidated people individually and collectively. It seems that ELT had been complicit in turning a blind eye to this conduct towards them and others. In Interviewee 28's opinion, ELT members should have had the courage in accepting individual and collective responsibility to do something about this management approach by the (former) Chief Executive but it appears on the face of the information Interviewee 28 has seen to date that most of them just accepted it and stayed silent. It also seems to Interviewee 28 that there has been some modelling of the (former) Chief Executive's style in other parts of the organisation and that is a serious cultural issue that will need to be addressed.

6.25 Interviewee 29 (a member of the Executive Leadership Team) told me about their personal observations based on attending ELT meetings. Interviewee 29's view is that the (former) Chief Executive was a big personality and dominated the proceedings. In Interviewee 29's previous authority there had been much more debate and every Committee report had been considered by the top Team. In Croydon, Interviewee 29 felt there was much less cohesion of management approach. Everyone tended to stay in their Directorate portfolios while the (former) Chief Executive did most of the talking. She was highly intelligent and full of bright ideas but not a completer/finisher and needed good people to ensure that things got delivered but that did not often happen. That should have been what ELT ensured happened. Interviewee 29 had also found that if you were in the (former) Chief Executive's gaze you knew what she wanted to happen, but when her gaze shifted – and it could quickly - you could feel that you were not being included and were not always clear what the (former) Chief Executive was asking to happen. It was really interesting that when COVID hit and the Council had been forced into essentially virtual meetings, as they had been in the office more together it became easier for Interviewee 29 to act as the (former) Chief Executive's 'critical friend' on a one to one basis.

6.26 Interviewee 30 (a member of staff) said that no one had been brave enough to do anything about the (former) Chief Executive's widely perceived bullying style. In Interviewee 30's view the (current) Monitoring Officer had been promoted to Executive Director of Resources by the (former) Chief Executive, and worked very closely with her and was never seen to have to challenge her. In Interviewee 30's view the (current) Executive Director of Resources may well be a very good lawyer and had been a very good Director of Law, but it was apparent to many that she could not or would not stand up to the (former) Chief Executive and was seen to be out of her depth as an Executive Director. Only the (current) Executive Director of Resources had lengthy service with the Council. The (current) S151 Officer had a few years at Croydon before joining ELT and the (former) Chief Executive had a couple of years at Croydon before her promotion. In Interviewee 30's view, the (former) Chief Executive appointed Executive Directors who appeared to be compliant and who would keep quiet about any concerns. Interviewee 30 considers that the (former) Chief Executive was really only interested in doing 'sexy' things to get herself and Croydon noticed, but she never did things properly and did not get initiatives embedded. Many of these initiatives were on the face of it laudable and sound in principle, but poorly executed. Interviewee 30 raised a further issue that had not helped in that the (current) S151 Officer, although a member of ELT, does not report direct to the (former or the current) Chief Executive but to the (current) Executive Director for Resources who has no financial background. An essential element of any senior management restructure in Interviewee 30's opinion will be for the S151 Officer to report direct to the Chief Executive.

6.27 Interviewee 31 (a member of staff) told me that the consensus view is of a dominant (former) Chief Executive and compliant Executive Directors who were reluctant to speak up and challenge even though that was the right thing to have done. In Interviewee 31's view the (former) Chief Executive was no doubt a strong and dominant individual in that role. Interviewee 31 said that the widely expressed view about ELT in their opinion was correct. Some of the Executive Directors, who could and should have spoken up and challenged members to guide their decision-making and

when appropriate to say no, failed to do so. In Interviewee 31's view it appears that nobody seemed able or willing to provide that challenge and the Council ended up as an organisation that did not say no to anything, no matter what the cost and whether or not it could be afforded. Although the (former) Chief Executive was certainly a forceful personality, Interviewee 31 did not recall witnessing any bullying behaviour by her nor was it experienced personally, but Interviewee 31 had been told about this by others. Interviewee 31 explained that the understanding amongst staff was that when the (former) Chief Executive was in a bad mood everyone would soon know about it by her behaviour in the office. Interviewee 31 does not understand why ELT members either individually or as a group did not apparently challenge her about her behaviour, particularly towards more junior staff. What has been said to Interviewee 31 is that ELT members always waited to see which way the wind was blowing and conformed to that direction. So, if the (former) Chief Executive was well disposed towards someone, the ELT members conformed to this and vice versa. In retrospect Interviewee 31 sees this as poor behaviour by all concerned and it was quite wrong that there had never been any apparent challenge.

- 6.28 Interviewee 8 (external to the Council) expressed the view that some of the senior officers in Croydon appear to just not be in the right job. In Interviewee 8's view they would probably be successful in authorities with a different culture to that of Croydon. What Croydon needs is a team of tough professionals to support the Leadership of the Council and to make sure that the members are advised well so they can take the best decision and do the right thing. In Interviewee 8's view there needs to be change at ELT.
- 6.29 Interviewee 32 (a member of staff) had witnessed the (former) Chief Executive bully a member of a team but did not raise this direct with her but instead raised it with another (current) Executive Director for Place a couple of times, but overall the behaviour did not change. Interviewee 32 was also aware that members of ELT also witnessed this bullying but did not step in to support Interviewee 32 or the staff member in the meeting. This led Interviewee 32 to the conclusion that there would not be any support if this was raised or if attempts were made to do something about it. Interviewee 32 also recalled that concerns about Brick By Brick had been raised at a Directorate DLT meeting and Interviewee 32 recalls the (current) Executive Director for Place responding by saying 'don't raise that with the Chief Executive'. Interviewee 32 feels that everyone was complicit and compliant in not raising issues and keeping quiet for fear of reprisal. So in Interviewee 32's opinion there certainly had been a bullying culture led by the (former) Chief Executive. Interviewee 32 is also convinced that those who could and should have intervened had the skills and/or the experience to understand what was going on and should have dealt with it.
- 6.30 In particular, in Interviewee 32's opinion, the Council's (current) two Statutory Officers should have used their powers in line with their statutory obligations and this is where Interviewee 32 has lost sympathy with those who will no doubt say that they were too frightened to act, too bullied by the (former) Chief Executive to do the right thing. Interviewee 32 described both (current) Statutory Officers at Croydon as internal appointments through promotion, and said it is not clear that the Council invested in developing them to ensure they had the necessary skills and knowledge to be able to act effectively in these roles. In Interviewee 32's personal opinion, the (current) Monitoring Officer appears not to have the essential qualities for that role particularly in an environment such as Croydon Council. Once Interviewee 32 had become aware of just how serious the financial issues were at Croydon, advice was sought by Interviewee 32 from the Labour Group at the LGA about how to raise concerns but no intervention resulted. The reality that Interviewee 32 witnessed was that the (current) ELT members did not demonstrate the skills, knowledge and capabilities necessary to solve the problems that Croydon had to deal with. In Interviewee 32's opinion, something drastic needs to change as ELT certainly failed to raise issues upwards but equally in Interviewee 32's experience, (current) Executive Directors are not willing to have difficult conversations with their subordinates either. Interviewee 32 was very clear on this point, and emphasised that it is not just a case of (current) ELT members needing to raise concerns with

a (former) Chief Executive who did not want to know. Interviewee 32 stated that two (current) members of ELT had statutory responsibility to do this and all of them could have raised their concerns externally with the relevant agencies. But it appears to Interviewee 32, that nobody did anything – they all kept their heads down and let it happen.

6.31 Interviewee 33 (a member of staff) told me that as part of the Renewal Plan there have been a number of focus groups that were facilitated as part of the Renewal Task Force work at which it became clear that two of those involved in the focus groups had witnessed or been told by one of their colleagues that bullying was occurring at meetings between the highest level senior Executives, that this was occurring regularly on the office floor in close proximity to where those individuals were located, and that it appeared to these members of staff as if this behaviour was being both trivialised and normalised. In the time that Interviewee 33 has been at Croydon, concerns about misconduct by managers on a few occasions had been mentioned at least a couple of times every year. Interviewee 33 would hear about bullying through people speaking up at group events, rather than through direct accusations, and further enquiry at the time indicated that these were localised occurrences, linked to a specific service area or individual, so when bullying was being referred to recently it became a cause for concern, and for the first time Interviewee 33 began hearing claims of bullying by those at the highest level. At these focus group events concerns about bullying were explicitly raised so Interviewee 33 has gathered more information about this. It is clear to Interviewee 33 that the bullying talked about was not a one-off but was a prevalent form of behaviour, particularly at ELT meetings. It is not clear why no one spoke up about either witnessing or experiencing this bullying behaviour at the time it happened.

6.32 Interviewee 33 was clear that this behaviour is in breach of the Council's Code of Conduct for staff and is against the Council's policies for Dignity in the Workplace. It seems to Interviewee 33 that no (current) member of ELT nor the (current) Director of Human Resources was apparently willing to deal with these concerns about the (former) Chief Executive's behaviour and elected members either were not aware of it or were not willing to deal with it either. In Interviewee 33's personal opinion, the (former) Chief Executive created an image of herself as a compassionate and caring individual which was in direct contradiction of the experiences that emerge from those who worked with her. This pattern of a dominant (former) Chief Executive who insisted that everything should go through her with no shared Leadership amongst Executive Directors is not new in Croydon as in Interviewee 33's opinion the (previous) Chief Executive also acted in this way. When the (former) Chief Executive was first appointed, and had been a Croydon Executive Director previously, the (former) Chief Executive seemed to want to break away from this pattern of behaviour and promote shared Leadership but it did not turn out that way. Interviewee 33 expressed the view that unless tackled, someone who has a powerful position like a Chief Executive can develop and maintain total dominance of a group of subordinates by isolating non-compliant individuals and by dividing and ruling. Interviewee 33 described the Council as working in silos based on the current Directorate structure, and although there may be highly competent people in managerial Leadership roles in those silos, they worked in isolation from the other silos. Interviewee 33's observation is that this isolation operates at the highest level in the Council and Interviewee 33 doubted that any (current) Executive Director has much knowledge or understanding of what their colleague Directors and their Directorates actually do. In Interviewee 33's opinion that is no basis for shared leadership and it allows a powerful (former) Chief Executive to dominate and control.

6.33 Interviewee 34 (a member of staff) had worked closely with the Council's senior political and managerial leadership and had worked with ELT for some time and told me that ELT has been very passive in the part it is playing in the Council's current recovery work, particularly the (current) Executive Director of Place and the (current) Executive Director of Resources. In fact, it is very much like it was when the (former) Chief Executive was in post when no member of ELT seemed able or willing to question or challenge her. Interviewee 34 personally believes that they

were appointed to their roles because the (former) Chief Executive knew that they would be compliant and not challenge her, and most of them had close personal relationships with her. The exception was the (former) Executive Director of Children, Families and Education and in the view of Interviewee 34 they just did not get on. Interviewee 34 believes in their opinion that the (former) Chief Executive seemed insecure and that is why Interviewee 34 believes she did not respond well to any challenge or disagreement. Interviewee 34 worked on the 7<sup>th</sup> Floor and told me there was always a lot of shouting by the (former) Chief Executive including shouting at Interviewee 34 about the Corporate Plan because she did not like what she was being told. Any Executive Director who disagreed with her did not last long although the (current) Executive Director of Adult Social Services had appeared to stand up to the (former) Chief Executive and had then chosen to move away from the rest of ELT and work from a different floor in BWH as part of his 'survival'. In Interviewee 34's view, he had done the right thing but had no support from the (current) Executive Director for Resources and Monitoring Officer or the others when the (former) Chief Executive did not agree with what he was doing. The problem has been that there was no safety net for bad decisions taken by ELT. In Interviewee 34's opinion, the (current) Executive Directors for Place and Resources seem to know that the writing is on the wall for them following the RIPI and the PwC review, as it seems to Interviewee 34 that they are just keeping their heads down and have nothing to say. In contrast a number of Directors are very competent and effective but they have been poorly led by their (current) Executive Directors. The (current) S151 Officer was put into a very difficult position when the (former) S151 officer left, and had to deal with the (former) Cabinet member for Finance and Resources trying to line manage her with no apparent protection from the (current) Executive Director for Resources and Monitoring Officer.

- 6.34 In the opinion of Interviewee 34 the three leading members of the (former) Cabinet had a very similar approach and style to that of the (former) Chief Executive. For example, the (former) Leader prescribed the choice to use The Campaign Company for community consultation work even though the chosen company was run by a (former) Cabinet member's ex-partner and employed her son. Whilst this was declared, the question was raised for Interviewee 34 as to whether this was acceptable conduct. From Interviewee 34's experience the (former) Chief Executive and the (former) Cabinet member for Finance and Resources were very similar and it was 'career suicide' to raise issues or challenge them. Interviewee 34 is of the view that this situation is fixable and that there are enough good people around in the organisation to fix it with effective political leadership and support from ELT.
- 6.35 Above all, Interviewee 34 was very clear that the Council should revert to the arrangement whereby officers advise and members decide instead of the mix-up in roles that there has been for years. The biggest risk to recovery in the opinion of Interviewee 34 is the current ELT and new Executive Directors need to be recruited for their skills, experience and competencies. In the opinion of Interviewee 34, the current ELT is not a Team at all and there is no trust apparent or shown between members of the Team. The Council's corporate systems do not work and this is reflected for Interviewee 34 in the way the ELT operates. Interviewee 34 explained that the corporate systems are very poor so, for example, there is no up to date organisation chart, so no control over establishment. There is no sense of the 'Croydon way' of doing things. Everyone does their own thing and the ELT has failed to get commitment in the organisation to collective and corporate working. That is the real challenge in the opinion of Interviewee 34 for the new (Interim) Chief Executive and the ELT if there is to be a real recovery for Croydon.
- 6.36 Interviewee 35 (a member of staff) told me that there has been a lack of challenge either to elected members or to the (former) Chief Executive. To illustrate how serious the lack of challenge to the (former) Chief Executive was in Interviewee 35's opinion, Interviewee 35 described what happened at the ELT meeting on 2 September 2020, just before the (former) Chief Executive left the authority. Interviewee 35 attended the ELT meeting along with the (current) Head of Internal

Audit, to present reports on the Annual Governance Statement and the Internal Audit Report respectively that would be on the General Purposes and Audit Committee agenda at its meeting on 7 October 2020. Interviewee 35 said that it was an awful occasion, the worst ever experienced. The (former) Chief Executive was angry and in particular said that this was the first time that she had been made aware of the issues raised in the (current) Head of Internal Audit's report and the failures of governance and internal control highlighted. In Interviewee 35's view this was factually not the case as the (former) Chief Executive would have been aware of the increasing number of 'limited' or 'no assurance' internal audit reports over a number of years from previous annual reviews of the Head of Internal Audit reports, as well as reports from the Council's external auditors. The (former) Chief Executive did not allow the (current) Head of Internal Audit to make a proper response to her claim that she had never been advised about any of this. In relation to the Annual Governance Statement she had asked '*where are the areas of risk that need to be prioritised?*' to which Interviewee 35 had responded that '*they are there for you in Tables 1 and 2 in the Statement*'. The rest of ELT made no challenge to the (former) Chief Executive's claims or to the way that she was talking to the staff presenting these reports – indeed, the rest of ELT appeared to be supporting her position. At the end of the item the (current) S151 Officer did say that as the responsible Director she would follow up on the points made in relation to the (current) Head of Internal Audit report.

- 6.37 Shortly after this meeting took place the (former) Chief Executive left the authority. For Interviewee 35 this meeting had brought into question why ELT members felt that they could not challenge the (former) Chief Executive or Cabinet members when it would be appropriate to do so. Despite the RIPI and the subsequent public commitment by the Council to prioritise risk management as part of its response Interviewee 35 is concerned that the Council still does not take the need for robust risk management as seriously as it needs to. Risk management is not currently particularly well resourced (and the current restructure proposals in Interviewee 35's view will reduce management capacity in this area) but equally important there needs to be a change in culture at the top of the organisation.
- 6.38 Interviewee 35 told me that when attending the ELT meeting on 9 November 2020, chaired (for that part of the meeting) by a (current) Executive Director in the absence of the (current) Interim Chief Executive, there had been a 'throw away' comment made at the start of the meeting by the Chair saying '*15 minutes on risk management is all that I can stand*'. Whether or not the comment was meant to be light-hearted, Interviewee 35 was very disappointed, particularly because no member of ELT questioned or challenged this remark by the Chair given the serious position the Authority is in. Given the significance attributed to Risk Management in the RIPI this does raise a question about whether there has yet been enough change to the culture, and whether the people around the top table are really committed to making the necessary changes and leading that change. Interviewee 35 believes that ELT members should support their officers who attend for presentations for areas for which they, as ELT members, are ultimately accountable and that without this it will not be possible for the organisation to move forward.
- 6.39 Interviewee 36 (a member of staff) told me that the Council's risk framework required an officer to carry out regular risk reviews at DMT/DLT and ELT level and in theory 25 of these are provided every 12 weeks. Some Directors have been engaged with this process, some are dismissive of it and some simply negate the whole process. It was not just the (former) Chief Executive who got the Council to where it is currently and the RIPI comment in Interviewee 36's view about 'collective corporate blindness' is correct, but also in Interviewee 36's view the (former) Chief Executive dominated the organisational culture and was very dictatorial. Interviewee 36 believed that she had an inner core of ELT/CLT and Head of Service supporters, and if an officer was in that 'gang' then they were supported and if they were not then they could be isolated and ignored. The membership of that inner core changed from time to time according to personalities and circumstances but the (current) Executive Director for Resources and Monitoring Officer, the

(current) Executive Director for Localities and Resident Pathways and the (current) Executive Director for Place were always members, in effect matching the so called 'inner circle' of the Cabinet.

- 6.40 Interviewee 37 (a member of staff) told me that there was one occasion whilst at ELT talking about a specific issue for which Interviewee 37 is the statutory lead for the Council and the (former) Chief Executive was ignoring Interviewee 37 and inappropriately asking ELT for their thoughts on what was being said by Interviewee 37 and whether they agreed with it. Interviewee 37's experience of ELT is that they were all very passive and compliant with the (former) Chief Executive and only the (current) Executive Director of Health, Wellbeing and Adults stood up for Interviewee 37 and tackled the (former) Chief Executive about her behaviour. On one occasion in the summer of 2020, via a Teams meeting, the treatment was so awful that Interviewee 37 had started looking at pension options and had fed this back to the Directorate DLT and the (current) Executive Director of Health, Wellbeing & Adults (who had not been in the Teams meeting). He had asked Interviewee 37 if a formal complaint was to be raised but Interviewee 37 was not sure that this was a good idea. It was clear to everyone that the (former) Chief Executive had her favourites and that in Interviewee 37's personal opinion, she was awful to others including Interviewee 37 - but not all the time. Interviewee 37 said that now there is a feeling of shame that the behaviour by the (former) Chief Executive was not 'called out' as it was bullying plain and simple. In Interviewee 37's opinion there should be no place for this in the workplace and when it happens at a very senior level it is difficult for others to manage and they can become complicit in the bad behaviour. Some members of ELT in Interviewee 37's view were more complicit in this bad behaviour than others.
- 6.41 Interviewee 38 (a member of staff) told me that having worked for Croydon for a long time it was only recently in a current acting-up role that there had been more awareness of what was happening from a broader perspective. Croydon had been good at promoting from within but with hindsight – and accepting that Interviewee 38 had been a beneficiary of this approach – maybe there should have been an equal focus on bringing external people in who would have wider experience and understanding of the roles they were appointed to. Interviewee 38 felt that this policy of internal promotions may have been a contributory factor to the situation the Council is now in where a lot of very senior roles appear to have recently been filled by people undertaking those roles for the first time in their career.
- 6.42 Interviewee 6 (external to the Council) said that the (former) Chief Executive was definitely a big personality and had clear expectations of the team but Interviewee 6 did not agree with the view that she had built a team of people who were compliant and would not challenge her. Interviewee 6 had seen the (former) Chief Executive accepting advice when she had thought it was sound, and one of her qualities was that she did not prevaricate but acted quickly. There had been space for challenge of her and Interviewee 6 had personally never found it a problem and knew that, equally, other members of ELT were not afraid to express their view and challenge when necessary.
- 6.43 Following a discussion at an early Resources Directorate Budget Development Meeting in the autumn of 2020, the LGA was commissioned to carry out an independent review of the Resources Directorate to help shape the submission to MHCLG. Although most of the resulting report is focused on that Directorate there are implications for the way Executive Directors are described as carrying out their corporate role as members of ELT:

*'Almost everyone I spoke to expressed concern about a strategic vacuum at the most senior level of the Directorate. There is respect for how hard the Executive Director works and recognition of the hugely challenging circumstances she inherited, but people are frustrated at the absence of a strategic vision for the Directorate moving forward and believe there is an urgent need for energetic, inspiring, empowering*

*and passionate Leadership from the top. I do not underestimate the enormity of the work that needs to be done or the level of scrutiny that the Team has been under, but if there is to be systemic change within the Directorate, it will need to be led with vision, inspiration and purpose from the top, bringing everyone on the journey.*

*The absence of strategic leadership within the Directorate is further illustrated by the fact that all the Directors I spoke to recognised that they do not operate as a team. Some were honest enough to admit that they have 'tuned out' of Directorate Leadership Team (DLT) meetings and all agreed that there is very little, if any, strategic planning or decision making at their meetings. All this then reinforces the silo-based working which seems to characterise the Directorate. One example of this was the recent attempt to identify a 15% reduction in costs across the Directorate; instead of the Executive Director and DLT considering this challenge strategically and collaboratively looking at the Directorate as a whole, the different teams simply looked at their own areas with some saying they were unable to offer up any savings. This review did not probe this in more detail and it may well be that some areas were able to offer up more than others; however the failure to address this through collaborative scrutiny and decision making at the top of the Directorate is indicative of six distinct teams working to their own priorities rather than a single corporate entity.*

*Some Resources' Directors acknowledged that they needed more strategic capacity within their teams but the current financial climate within the council has meant they've been unable to recruit people to provide it. The 'salami slicing' approach to the 15% reduction in costs exercise was a missed opportunity for the Directorate to consider carefully both what it should be doing and what skills it needs to do that well.*

*Unsurprisingly, the absence of strategic visioning and decision-making at the top of the Directorate means there is no clear Resources 'offer' to the rest of the organization. During my conversations it was clear that everyone I spoke to understood what the role of Resources should be, but developing it and articulating it to the council more widely has proved a challenge too far. For example, one interviewee said 'the corporate centre should create the pathways for the organisation to work together through rules and behaviours' which is a succinct and accurate way of describing what the Directorate should do. However, there is no evidence of meaningful consultation or conversations with colleagues across the council about what they want and don't want from the corporate centre, and hence no clear proposition about what Resources can/can't do or will/won't do. Even where strategic activity has occurred, such as the Workforce Strategy, colleagues outside of the Directorate were vague about what it said or required of them. People were quick to point out that the whole council has lacked strategic focus for the past three years but the significant challenges the Council and Directorate face cannot continue to be an excuse for strategic inertia. The chain should be broken.'*

- 6.44 Interviewee 9 (external to the Council) told me that the Chief Executive of Interviewee 9's local authority had worked closely with the (former) Chief Executive from the summer of 2019 in a mentoring role. Interviewee 9 was aware that as part of the mentoring discussions, the question had been asked whether the (former) Chief Executive knew how bad things really were, and had the reply that she did and she blamed the (former) Leader and other senior politicians for the mess. Interviewee 9 said that from observing the (former) Chief Executive and the (former) Leader working together, it was clear that the (former) Chief Executive simply did not have the mechanisms that many Chief Executives have developed to deal with demanding and difficult

politicians. In situations like Croydon in Interviewee 9's opinion what you need is a tough Chief Executive with a tough team of colleagues – particularly the Monitoring Officer – to support and reinforce the hard line that needs to be taken when members want to do things without effective governance in place and that could be dangerously risky or even ultra vires. The (current) Monitoring Officer was an internal appointment with limited external/other Council experience and again from personal observation, did not appear to be able to provide the support required or to challenge the politicians.

- 6.45 It seemed to Interviewee 9 that the (former) Chief Executive had surrounded herself with people who would not challenge or question her. In Interviewee 9's view it was alarming how quickly the (current) Executive Director of Place had adopted the same approach as the (former) Chief Executive when she took over as Interim Chief Executive when the (former) Chief Executive left in the summer of 2020. Interviewee 9 believes that the (former) Chief Executive had surrounded herself with a team of senior managers very much in her image, including a Director of Early Help and Children's Social Care who Interviewee 9 has no doubt was told to just keep on spending to get out of the Ofsted 'inadequate' rating and not to worry about overspends. Interviewee 9 also described how the (current) Executive Director of Place claimed that she had asked for financial information from Brick By Brick but then stated that she had not been provided with any. She was a non-Executive Director on the Board of Brick By Brick and in Interviewee 9's opinion it is just not good enough that she had apparently just accepted what she was told without further challenge. Finally, Interviewee 9 commented in their view, the (current) Executive Director of Health, Wellbeing and Adults seems to have just kept on spending even though he was made aware of his Directorate's serious overspending and the Council's dire financial position.
- 6.46 Interviewee 39 (external to the Council) said that in their view, the (former) Chief Executive had been appointed as Chief Executive because of her passion for regeneration which matched the (former) Leader's and the Labour Group's agenda for the Borough. It is clear to Interviewee 39 that the (former) Chief Executive then chose people as Executive Directors who would stand compliantly behind her and not necessarily challenge or raise any issues. Interviewee 39 told me how positive it was to see the (current) S151 Officer growing into her role but sadly believes that she may not have the skills nor experience to be an effective S151 Officer in a difficult place like Croydon, and may not have been the right person for the job at this time. Interviewee 39 noted that the (current) Executive Director for Resources and Monitoring Officer has now found her voice since the (former) Chief Executive left and has lately been giving the (current) S151 Officer useful support, but probably in Interviewee 39's view this is too little and too late.
- 6.47 In Interviewee 39's personal opinion the (current) S151 Officer is not the right person for this challenging role at Croydon. The (former) Chief Executive's focus on regeneration and high profile projects drove the organisation with not enough attention being given to how this agenda could be afforded or managed. It was certainly an exciting agenda on the face of it but without effective governance, insufficient financial management and advice. Interviewee 39 said in their view, that assembling an ELT whose members were compliant and silent appeared to be part of the (former) Chief Executive's strategy and she had picked a third tier Finance officer to be S151 Officer when the (former) S151 Officer had left [REDACTED]. The (current) S151 Officer in Interviewee 39's view has been pressured, bullied and leaned on by the (former) Chief Executive and by (former) Cabinet members to mask the facts and only now has she been able to do the right thing and issue a S114 notice that should have been issued months ago.
- 6.48 The (former) Chief Executive brought in the (former) Executive Director of Children, Families and Education following the Ofsted rating of 'inadequate', and had given him free rein to fix the systemic problems in the Directorate. In Interviewee 39's view when it all started to go wrong with the Council's finances he just disappeared. It seems to Interviewee 39 that the (former) Chief Executive had given no thought to who she really needed as Executive Directors to deal with the

serious issues facing the Council, what skill sets were required – she had just picked whoever was available and would be compliant. Interviewee 39 commented that the (former) Chief Executive’s approach to the financial crisis facing the Borough appeared to be to make it look as benign as possible publicly, then to deal with it behind closed doors in the hope that no one would find out how bad it really was. Unfortunately, things were much too serious to be managed like this. The only current member of the Croydon ELT that Interviewee 39 would, in their opinion, employ is the current S151 Officer – but not as the S151 Officer but as a reliable finance professional to support an effective S151 Officer. The (current) Executive Director of Place had followed the same approach as the (former) Chief Executive when she was given the opportunity when the (former) Chief Executive left, and had resolutely defended Croydon’s stance that it would ‘*all be all right*’ and in the opinion of Interviewee 39 had demonstrated no understanding of the seriousness of the situation.

- 6.49 In the view of Interviewee 22 none of the key senior officers involved - including the former Chief Executive, the S151 Officer and the Monitoring Officer – had been sufficiently assertive in resisting or correcting poor governance. They were all internal appointments and lacked experience at this level. They were used to the Croydon culture where members are in charge and officers do as they are told. The Statutory Officers all fell short of their responsibilities to question, to challenge and if necessary to stop decisions being made and actions being taken that were clearly wrong. Officers’ reports were very bland and any negatives were played down. It also is the case that Cabinet members instructed that sections of some important reports be rewritten to play down concerns about what was being proposed. Interviewee 22 had some sympathy for the current S151 Officer. She had to step into her predecessor’s place when he left at short notice and her post was not filled, so she was in a new role at a very challenging time with no effective back up.
- 6.50 Interviewee 22 considers that the current Executive Leadership Team needs to be strengthened as it is just not currently fit for purpose in a challenging authority like Croydon. It is clear that they have no confidence in each other, that the people who report to them have no confidence in them and elected members certainly do not have confidence in members of ELT.

## The roles of elected members and officers

7.1 The Croydon Protocol on Staff Councillor Relations (August 2019) at Part 5B of the Council's Constitution is very clear about the respective roles of elected members and Council officers.

Paragraph 1.8 of the Protocol states concisely that:

*'The role of staff is to give advice and information to Members and to implement the policies determined by the Council.'*

The Protocol also confirms at Paragraph 1.9 that certain employees - the Head of Paid Service, the Monitoring Officer, the Chief Financial Officer (Section 151 Officer) and the Statutory Chief Officers - have responsibilities in law over and above their obligations to the Authority and its members which they must be allowed to discharge.

The Protocol is more detailed about the responsibilities of elected members:

Paragraph 1.5:

*'Members have three main areas of responsibility: determining the policy of the Council and giving it political Leadership, representing the Authority externally, and acting as advocates on behalf of their constituents. It is not the role of Members to involve themselves in the day to day management of Authority services.'*

and Paragraph 1.6:

*'Members of the Executive, Chairs and Vice Chairs of Committees have additional responsibilities. Because of those responsibilities, their relationships with employees may be different from and more complex than those of Members without those responsibilities and this is recognised in the expectations they are entitled to have.'*

and Paragraph 1.7:

*'Opposition Members.*

*Members shall be given timely access to information that they require in their role as Members. As individual Members of the Council, all Members have the same rights and obligations in their relationship with employees and should be treated equally. This principle is particularly important in the context of scrutiny and overview. However, where a political group forms an administration, either alone or in partnership with another group or groups, it is recognised that the relationship between staff, particularly those at a senior level in the organisation, and the administration shall differ from that with opposition groups.'*

7.2 So in Croydon, as in all local authorities, the principle is that the paid officials will advise and that the elected members will decide. Of course, in reality it is always more complicated than that, but even so the expectation is that members will listen to and respect all the relevant advice from the professional officers given privately and in public and will have formal regard to that advice in the decisions that they make. Each principal Council is required to appoint three Statutory Officers – the Head of Paid Service, the Monitoring Officer and the S151 Officer – who have specific statutory duties and an important, independent role in promoting and enforcing good governance. The expectation is that these three Statutory Officers will ensure that any decision

taken by elected members is taken within vires, is prudent, affordable, is managerially feasible and is capable of being delivered.

7.3 The Report in the Public Interest is clear about what went wrong at Croydon:

*'It is clear that there are improvements needed in the culture of decision making as it relates to financial sustainability. The Council's Financial Position has deteriorated to the level where external support from MHCLG is required. Whilst the COVID-19 pandemic has created significant financial pressures for local government, the depth of the issues facing Croydon existed prior to the pandemic. The Council has shown collective corporate blindness in missing opportunities to tackle its financial position'*

7.4 Interviewee 1 (a former and/or current member of the Cabinet or Committee Chair) told me that after the local elections in May 2018, the (former) Chief Executive was in Interviewee 1's view conducting herself in a very different way. She had made it very clear to Interviewee 1 that she did not like the idea of the Council being 'member led'. In interviewee 1's opinion she became obsessed with being called Head of Paid Service, and also resented what she described as member interference. Interviewee 1 felt it was a constant battle with the (former) Chief Executive and that she had become very preoccupied with what she called a new organisational Operating Model. Over time, things in Interviewee 1's view continued to deteriorate although there were some 'wins' including a much improved Children's Service that has been recognised in the recent Ofsted report.

7.5 Interviewee 11 (a former and/or current member of the Cabinet or Committee Chair) told me that the culture of the organisation was a big issue, and Interviewee 11 had taken this up with the (former) Chief Executive following the local elections in May 2018. Interviewee 11 described how in a marginal council like Croydon for the six months leading up to the local elections in May 2018 members were focused significantly on the election as there was the possibility of change of control of the Council. So in Interviewee 11's view, members were at the lowest point of their authority during this period leading up to an all-out election. Interviewee 11 saw that the (former) Chief Executive had filled that space and the balance of power had changed. When Labour came back to form an administration in May 2018 with an increased majority and an ambitious manifesto to deliver, this inevitably led to difficulties between the (former) Chief Executive and the former Leadership. Interviewee 11 reported that the (former) Chief Executive started to say '*but I'm the Head of Paid Service*' during any difficult conversations with members. To Interviewee 11, this seemed to be a device by her to close down any debate and to impose her authority over members. It soon became clear to Interviewee 11 that the relationship with the (former) Chief Executive had changed significantly. She seemed to Interviewee 11 to be intent on pushing elected members to one side and to hamper or even prevent the flow of information to them. This had resulted in a series of rows between Interviewee 11 and the (former) Chief Executive. The (former) Chief Executive had complained to the (former) Leader but Interviewee 11 described being treated with disrespect by her, saying that Interviewee 11 had no right to be so inquiring and demanding to know things. The (former) Leader was supportive to Interviewee 11 but the relationship with the (former) Chief Executive was very much affected by this from then on. Interviewee 11 did consider making a formal complaint about her but in the end decided not to. What has become much clearer to Interviewee 11 recently is the extent to which members had been marginalised over the last couple of years. There were things in the RIPI that Interviewee 11 only found out about on reading the report, for example that one of the Council's companies had been struck off in 2019. In Interviewee 11's view this was a major issue that members should have been made aware of. The issues around Treasury Management flagged up in that Report were also a total shock to Interviewee 11.

7.6 In Interviewee 11's view there had been a lot of 'push back' from officers about a number of things and members were not really advised about what was happening with the Council's finances - such as the extent of the volatility around Placement costs. It is clear to Interviewee 11 now, that proper financial management processes were not in place and that the necessary restrictions were not being implemented. Interviewee 11 now believes that the (former) Chief Executive had instructed the Finance Department and other staff not to share key information with Interviewee 11 even though it was pertinent to the role held by Interviewee 11. Another feature of the culture that Interviewee 11 described as in place after the 2018 local elections was that many of the decisions that the Administration made both in private and public were not implemented. Interviewee 11 gave some examples:

- the Cabinet decision about potential loans to Brick By Brick was that any such loans should only be agreed in consultation with the (former) Cabinet member for Finance and Resources. The Cabinet member was never consulted about this and there were no checks and balances in place to ensure this happened.
- Interviewee 11 had many 1 to 1s with senior officers. Interviewee 11 recently came across an agenda for meetings with the (current) Executive Director for Resources and the (current) S151 Officer in April 2019 when it was agreed that because of the pressure on the (current) S151 Officer she should have a deputy to free her up to focus on her S151 responsibilities. As there was no budget for this, Interviewee 11 spoke with the (former) Leader and they agreed that it was a priority and the money needed to be found – but this did not happen until very recently.
- this was not just a problem with Finance staff. The (former) Cabinet Member for Clean & Green got a lot of flak over charging for replacement wheelie bins but officers had not implemented the policy as agreed by Cabinet and Full Council as part of the budget papers.
- there was a vacant Council-owned site ideal for supporting accommodation for vulnerable adults. It was agreed that should happen in 2017 but nothing happened apart from the building being demolished.
- there were many discussions as part of the 2019/20 budget discussions about the cost of temporary accommodation and it was decided to decommission some accommodation and not enter into new 'Croydlease' agreements but these agreed actions were not implemented.

7.7 In Interviewee 11's view there were many decisions taken by Cabinet or Cabinet Members that were simply disregarded and not implemented, and Interviewee 11 had only come to realise the full extent of this recently.

7.8 Interviewee 11 described how the Ofsted 'inadequate' judgement was a real shock to everyone, and not least to Cabinet members as they had been led to believe by officers that the judgement would be at the top end of 'requires improvement', so the judgement was a real bombshell. Interviewee 11 was of the view that during the Ofsted inspection some of the basic information provided by Council officers had been manipulated and the Inspectors had realised that this did not add up. This situation led to members being concerned about what they were being told by officers and whether any information or advice that they were given could be trusted.

7.9 When Interviewee 11 was asked in the course of the interview whether there had been too much intervention by Cabinet leads, the response was an acceptance that some (former) Cabinet members were very 'hands on' but that maybe Interviewee 11 personally had not intervened

enough. In response to the question whether the member, by answering questions at Scrutiny Committee or General Purposes and Audit Committee meetings ahead of officers had perhaps prevented responses being given instead by officers, Interviewee 11 said that the interventions at such meetings were answering the questions that were basically political in nature and that factual answers had been left to the relevant officer. Interviewee 11 added that at a Council like Croydon what is said in response to political challenges really matters, and that Interviewee 11 personally believed they were much better placed than any officer to deal with such questions. Interviewee 11 said that the officer advice was always followed and if on occasion the S151 Officer had disagreed, they would properly discuss the matter and reach a consensus.

- 7.10 Subsequent to our meeting Interviewee 11 submitted further examples of concerns about the advice given to members by Council officers and the way decisions were often not implemented in relation to: the accounting treatment of the Dedicated Schools Grant Deficit; the use of Capital Receipts; and the reasonableness of accounting estimates and reserves.
- 7.11 Interviewee 11 felt there were a number of occasions when decisions by the Cabinet or by a Cabinet member had not been complied with. As well as the Brick By Brick loan example mentioned in the interview, and the non-observing of the Treasury Management limits policy, there were also issues around the award of contracts with ex-post approval. A particular example that came to Interviewee 11's mind was the work that Impower carried out. Interviewee 11 was aware that the (former) Cabinet member for Finance and Resources had been asked to sign this off after the work had been done even though the required procurement process had not been followed. Interviewee 11 was told that that had reluctantly been done as much of the work had been carried out by that time. However, a proviso was inserted into an email from the Cabinet member to the (current) S151 Officer that any extension, of whatever size, would need to be approved by the Cabinet member in future (i.e. that normal officer delegations on extensions would not apply) and yet the work was then extended without this approval.
- 7.12 In Interviewee 11's opinion there had been considerable information withheld by officers of the Council, including:
- the scale of overspend in 2019/20
  - the state of the Finance Team (i.e. how weak it was)
  - the striking off of London Borough of Croydon Holdings LLP
  - the breach of treasury management limits
  - details of loans to Brick By Brick.
- 7.13 Interviewee 11 gave more examples of where decisions were not implemented:
- not extending contracts where London Living Wage was not required
  - moving to a much higher proportion of vulnerable adults being in supported living rather than nursing home/ residential homes
  - alternative use of Croydon Park Hotel post insolvency of the operator
  - proposed rent relief by the Council at the beginning of the pandemic

- overhaul of organisation and processes regarding placement costs
- increased parking enforcement

- 7.14 Interviewee 19 (a former and/or current member of the Cabinet or Committee Chair) told me of the firm belief that the ‘Strong Leader and Cabinet’ model introduced in 2010 had changed the culture of the Council and the way that officers related to members. Although Interviewee 19 had had concerns about how the Labour Leadership had operated before 2006, this was more about the personality of former Leaders than the governance model itself. In Interviewee 19’s opinion, when the (former) Leader took over the Labour Group in 2004 he had successfully led the Council up to 2006 and had helped put the Council in a stronger financial position. When Interviewee 19 returned to the Council in 2010 it was clear that the new model under the then Leader was less transparent and that a back-bench councillor had to work very hard to find out what was going on. For example, after the 2010 election the Council moved the weekly bin collection to a two-weekly cycle. When challenged about this decision, the response was that it was authorised by a budget line that said ‘waste re-organisation saving’, and that the Opposition should get better at asking the right questions.
- 7.15 Interviewee 19 believed that officers had aligned themselves to serving the ‘Strong Leader’, and as a result stopped supporting other councillors. In Interviewee 19’s opinion, report writing by officers became poorer, information became harder to come by, and the Scrutiny function and being held to account became an irritation to be suffered. Many officers in Interviewee 19’s view only offered information when it was asked for, and it was difficult to understand what new policies or strategies were being worked on. The Pickles reforms of 2010/11 that allowed councils not to produce a Forward Plan was a retrograde step which Interviewee 19 saw Croydon gleefully embracing. It is only now in 2020 that there is a proper Forward Plan that lists key decisions. An example of officers enabling this can be seen when the (former) Leader in 2014 was able to claim additional Leader’s Allowance without making a public announcement. In Interviewee 19’s view officers facilitated this, and this additional £11K claim only came to light following the 2014 local elections.
- 7.16 In Interviewee 19’s view there has been a lack of curiosity by members and that all members of the Council share a responsibility for the current crisis. Too often decisions were nodded through or not challenged. In Interviewee 19’s view, some of this is down to lack of information, and it is also down to some members seeing issues such as Planning more important than Finance. Interviewee 19 said that members lacked training in risk management and the Council’s finances and this had led to a large group of members who were willing to consider the information that was set in front of them, but not willing to ask for new or additional information on other topics. It may also explain for Interviewee 19 why many backbench councillors do not sign up for Scrutiny and Overview Committee where there is an expectation that members will challenge and to do some personal research and additional reading.
- 7.17 In Interviewee 19’s view there has also been a ‘withering’ of the corporate centre. Interviewee 19 had been aware that efficiencies/cuts had been made to the corporate centre, but this last 6 months has shown the detrimental impact of this. This does not just apply to the Finance Team which in Interviewee 19’s view did not have enough resources to keep accurate oversight of things, but to all aspects of the corporate centre including HR and policy making. For example, Interviewee 19 had been surprised to find out in 2019 that the Council was only then putting together a library of current policies and strategies. Finally, Interviewee 19 expressed concerns about the role of the (current) Monitoring Officer. Interviewee 19 has had a good working relationship with both the current and former Monitoring Officers, but does not believe that there has been sufficient independent advice provided on governance issues. Interviewee 19 also said that in their opinion the same applied to the (current) S151 Officer. Information was provided, but context and

independent professional advice was not. Interviewee 19 believes that, going forward, these Statutory Officers need to give confidential professional advice to all parts of the elected member body on any concerns they may have about the Council's actions.

- 7.18 Interviewee 40 (a member of the Opposition Group) told me that as someone new to the world of local government it is still very difficult after a few years as a councillor to understand the way Croydon works. Interviewee 40 still does not really understand the linkages between elected members and officers, nor why there are so many Boards, Panels and Committees. Interviewee 40 accepts that being a member of the Opposition makes things different but believes that having asked for something – a report, some information, some advice – it is rarely provided and in Interviewee 40's experience excuses such as '*I will have to get permission*', '*the person who knows is on leave*' are used. Interviewee 40 has raised and pointed out many failings by the Council, for example that there are poor job descriptions for Cabinet members or there is no clarity of responsibility and accountability for what it actually means for elected members to be Corporate Parents. In Interviewee 40's opinion, in Croydon nobody seems to be responsible for anything and no one seems very concerned about that.
- 7.19 Interviewee 40 accepts that maybe all local authorities are like Croydon but hopes that is not the case. In Interviewee 40's view, officers are there to advise and inform members but it is the elected members who are the decision-makers, and it is the unwillingness of key members of the administration to acknowledge the seriousness of the situation and to deal with it effectively that is responsible for the plight the Council finds itself in. So the fact is, in Interviewee 40's opinion, the (former) Chief Executive and leading members of the administration were all part of the problem and between them created the situation the Council is in.
- 7.20 Interviewee 41 (a former and/or current member of the Cabinet or Committee Chair) told me that when the (former) Chief Executive was promoted to the post of Chief Executive in 2016 she had been very energetic and keen to deliver the things that she wanted but this all changed after the Ofsted judgement. The (former) Chief Executive should have ensured that the Leader and Cabinet were given strong advice about the Council's financial difficulties – assuming that she had been aware – and it is interesting that when questions were asked about Brick By Brick and other initiatives at Cabinet or General Purposes and Audit Committee meetings it was members who usually answered and officers were generally silent. In Interviewee 41's view officer advice in situations like this should always predominate because members are not full-time professionals and should rely on and listen to the advice that officers are giving. Going forward, there should be training for officers and members to learn to work more effectively together and members should accept that they need to ask for and to listen to officer advice. Interviewee 41 is clear that, of course, all Cabinet members should fully understand their brief and know all about the services in their portfolio, but if an officer says that the Council should not do something or that it cannot be afforded then that officer advice should be respected and followed.
- 7.21 Interviewee 23 (a former and/or current member of the Cabinet or Committee Chair) had previous employment experience in the public sector. When elected as a councillor in Croydon, Interviewee 23 was immediately appointed as one of the Deputy Cabinet Members. The deputy role is not executive in nature and Interviewee 23 did not attend Cabinet meetings but was involved in many meetings and discussions, particularly around policy development for that portfolio. Based on Interviewee 23's experience it seems that a good Council relies on an effective balance between the roles of officers who advise on and implement decisions that are made by elected members who use that advice in making good decisions and then allow officers to implement. In Interviewee 23's opinion, what Croydon has had is a small number of very strong personalities in the Cabinet so the 'Strong Leader' model has been dominated by those people who effectively ran the organisation while other Cabinet members were to a large extent excluded and simply focused on

their own portfolio. So, in practice, the key decisions were made by the (former) Leader, the (former) Deputy Leader and the (former) Cabinet Member for Finance and Resources.

- 7.22 The 'Strong Leader' model presumes that all Cabinet members would be fully involved in debating and deciding on the key decisions taken by the Cabinet but it appears that this has not been the case all the time. It also appears to Interviewee 23 to be the case that officers in the past have not been sufficiently involved in giving the necessary advice to the Cabinet, for example about commercial initiatives like Brick By Brick and the purchase of a hotel, before the key decisions were decided on by the Cabinet. But that in turn raises for Interviewee 23 the question of whether the officers at Croydon had the right kind of experience and knowledge to allow them to give the kind of professional advice that was needed.
- 7.23 Interviewee 23 believes that in former times the Council was focused on delivery of its core services and there were limited decisions about how to best manage those services when there was a need to make cuts and to instigate redundancy programmes for example. Now there seems to be less focus on traditional core services and a new requirement for officers with commercial and business skills to ensure commercial investments like Brick By Brick are set up and working properly, but Interviewee 23 questioned whether there are people with those skills amongst the current Executive Leadership Team or the Directors employed by Croydon Council.
- 7.24 Interviewee 23 does not understand how some of the things that have gone seriously wrong have been allowed to happen. The Council does have a Risk Management Team and a Risk Register that Interviewee 23 assumes is monitored, so questioned what were they doing when things were going wrong and the Council ended up with a RIP? Why did the (former and current) S151 Officer and the (current) Monitoring Officer not speak up and say this is wrong or we should not be doing that because it was too risky or it could not be afforded?
- 7.25 It has struck Interviewee 23, following an LGA session about Council commercial initiatives that Interviewee 23 attended, that Croydon has not been doing anything unusual in setting up Brick By Brick or purchasing a shopping mall. However, the many other local authorities that have been doing similar things to produce valuable income streams for their Councils have been doing it right, assessing the risks, getting the right governance arrangements in place. Lots of Councils are making it work really well, so Interviewee 23 wonders why Croydon got it so wrong. Why the risk of the commercial initiatives going wrong was not flagged up more clearly and why were the appropriate governance and monitoring arrangements not put in place? It seems clear to Interviewee 23 that officers were not giving the right advice to members, but now questions was this because they were incapable or because senior leaders/managers were telling them to keep quiet? Or were these senior officers and/or the (former) Chief Executive being told by the (former) Leader and the (former) Cabinet member for Finance and Resources not to ask questions or raise concerns?
- 7.26 Interviewee 24 (a former and/or current member of the Cabinet or Committee Chair) said that they did not have a close working relationship with the (former) Chief Executive, but did have a feeling over the last 18 months or so that there was a growing gap between the (former) Chief Executive, the Executive Leadership Team and the Cabinet. So, if there was an increasingly dysfunctional relationship between the political Leadership and the organisational Leadership, Interviewee 24 has to ask why this was not recognised and 'fixed'. The Council commissioned a governance review that has taken a long time and is still in progress, and there are some proposed changes in the way the Council works with more Committees and different working arrangements between members and officers. To suggest that what has gone wrong is simply a lack of trust of officers by members, a breakdown between the Leader and the Chief Executive and the desire to have a member-led Council after the 2018 local elections is in Interviewee 24's opinion too simplistic. Interviewee 24 confirmed that the Ofsted judgement in 2017 had been a shock to the Leadership

generally. The then Executive Director for children, families and education was replaced and then replaced again and a far-reaching recovery plan with significantly increased resources for Children's Services was put in place. Interviewee 24 also considers that the new Administration that was in place following the May 2018 local elections was more emboldened than previously and politicians do like to think they are running the show – but then so do the officers, so there is inevitably conflict.

- 7.27 When Interviewee 24 joined the Council it was clear that the Council was too much officer driven and the Labour Group wanted to see its values and its vision for the Borough better reflected in the work the Council did, and the (previous) Chief Executive with his financial background was too dominant and managerial in his approach. The (former) Chief Executive was appointed when he left as it was clear to Interviewee 24 that she had greater vision about what Croydon needed and how the Council should respond. Interviewee 24 really does not know whether it has been a failure by the political leadership or by the Executive management leadership that led to things going wrong, but is clear that action could and should have been taken much earlier to deal with the issues. However, in running a local authority it is essential to maintain the distinction between the role of officers and the role of members. It does seem to Interviewee 24 that in Croydon some members got this mixed up but this may have been because the weakness of the ELT and the lack of trust in officers led to this being a rational way of working for leading members.
- 7.28 Interviewee 42 (a former and/or current member of the Cabinet or Committee Chair) told me that the Director for Finance had taken on a big job as the Council's (current) S151 Officer when the previous S151 Officer left and that she was never given the proper support by her line manager, the (current) Executive Director for Resources and the (former) Chief Executive. Again, things might have been very different in Interviewee 42's opinion if the (former) Chief Executive and the (former) Cabinet member for Finance and Resources had let her do her job as S151 Officer properly. Interviewee 42 said that in their opinion the reality was that the (current) S151 Officer found herself very much in a difficult place between the (former) Chief Executive and the (former) Cabinet member for Finance and Resources. They did not get on well with each other and both wanted to be in charge.
- 7.29 Interviewee 25 (a member of the Executive Leadership Team) said that it was not their experience that officers at Croydon were discouraged or prevented from speaking at meetings. That was certainly not the case at ELT meetings but officers, including the (former) Chief Executive, were not generally expected to speak uninvited at Cabinet meetings which were seen essentially as political events. So the appropriate Cabinet members would speak to the item at Cabinet meetings and officers did not offer views or advice beyond what was already in the written papers.
- 7.30 Interviewee 43 (external to the Council) told me that the (current) S151 Officer's relationship with the (former) Cabinet Member for Finance and Resources had been problematic because in Interviewee 43's opinion the (former) Cabinet Member for Finance and Resources had behaved as if he was the S151 Officer. This included rewriting the S151 Officer's reports to Cabinet. In Interviewee 43's experience that was the approach of the (former) Cabinet member for Finance and Resources generally, and indeed he had wanted to see Interviewee 43's report on financial management at the Council before it went to the Finance Review Panel. Interviewee 43 had refused.
- 7.31 In Interviewee 43's opinion elected members in Croydon have had too much influence and control over what happened at a very granular level and officers seemed either unwilling or powerless to stop them from interfering. There are a number of Boards at Croydon that, unusually in Interviewee 43's experience, have elected members as well as Council officers as members. For example, the Investment Board has three elected members sitting on the Board. The Board has no decision-making powers but it sits between the ELT and the Cabinet so the members on the Board can

influence operational matters, and take decisions behind closed doors that are then rubber-stamped by the Cabinet without the necessary information and challenge to ensure good governance. That is how Croydon has been run in the past.

- 7.32 Interviewee 43 said that there are concerns about behind the scenes possible tampering by elected members with critical decisions, for example with Council Tax setting which is essentially a purely technical process that feeds into the budget-setting process and is crucial to the budget that is finally agreed by the Council. The (current) Interim Deputy Director of Finance had told Interviewee 43 that he had discovered that 5,000 additional properties seem to have been added to the Band D Council Tax base for Council Tax income calculation purposes with no clear explanation. Interviewee 43 said that, according to members of their team, the (former) Head of Corporate Finance was apparently instructed by the (former) Cabinet member for Finance and Resources to place an extra 5,000 properties into Band D as it would significantly increase the predicted income from Council Tax which would in turn assist with immediate budget balancing and setting decisions.
- 7.33 Interviewee 11 (former and/or current member of the Cabinet or Committee Chair) told me that this was a falsehood and that to their knowledge no-one had been instructed to inflate the estimate of new Band D properties in the Borough as part of the budget-setting process. Interviewee 11 said that first, there had not been the power for members to instruct officers in this way. Secondly, the (former and current) S151 Officer had to be satisfied about the reasonableness of all assumptions in the Budget. They often had discussions about those assumptions, but always came to an agreed position. There had been a discussion about the budget assumptions in respect of the Council Tax base. To put this in context, the Council had, year on year, taken a very cautious approach to Council Tax base growth and had ended up with a large Collection Fund surplus. When Interviewee 11 saw the draft budget assumption (very early on in the process), this had looked very modest given the year-on-year track record and the amount of construction activity going on in the Borough, so Interviewee 11 did say that this needed to be looked at again. The relevant Head of Service went away, spoke to their counterpart in the Planning Department, and the figure was revised upwards (Interviewee 11 cannot find documents to say by how many the assumption was increased). However, Interviewee 11 believed there was not a specific number given nor instruction that there should be an increase, and Interviewee 11 had not been made aware of any adverse variance in Council Tax Base as against the budget assumption.
- 7.34 Interviewee 44 (a member of staff) said that elected members in Croydon are very directive and very involved in operational matters. What had particularly struck Interviewee 44 was that there were so many meetings involving both members and senior officers, with members often dominating the meetings. Interviewee 44 said that it appeared that the usual checks and balances on political ambition were not working so that a very ambitious political agenda had dominated the work of the Council to the exclusion of proper governance.
- 7.35 Interviewee 45 (a member of staff) told me that it had been more difficult recently for Council officers to do what they have been used to doing previously as expert professionals giving advice to elected members. The (former) Chief Executive had discussed with senior managers how difficult this was becoming and how it was compromising the traditional officer/member relationship. Part of Interviewee 45's role had been to brief the (former) Cabinet member for Finance and Resources on matters around health and social care integration, a task that at times proved to be challenging. The difficulties around officer/member relationships were raised by the (former) Chief Executive and discussed at ELT and CLT meetings, but the recent pattern where it became harder to know who was making management decisions – an ELT member or a Cabinet member – became quite engrained, and people were increasingly unhappy about this. Interviewee 45 now has a new Cabinet member and is happy to say that this Cabinet member is very supportive,

wants to be briefed by officers and has asked the right questions. The relationship with the Cabinet member is now as it should be.

- 7.36 Interviewee 30 (a member of staff) said that the situation had not been helped by the (former) Cabinet member for Finance and Resources clearly thinking himself financially astute, but in Interviewee 30's professional opinion was not. In addition, he did not appear to understand or respect the difference between officers and members and in Interviewee 30's opinion tried to act as a quasi S151 Officer and interfered significantly. Interviewee 30 had attended meetings of General Purposes and Audit Committee and although this Cabinet member was not a member of that Committee – in fact he could not be – he regularly attended and answered questions on behalf of officers. He also attended pre-agenda meetings and influenced the work plan of the Committee. Part of the problem has been that General Purposes and Audit Committee has not had a regular Chair and it has changed every year although this time the Chair has been in place for a second year. Interviewee 30 believes that this has also contributed to some of the criticism about the level of challenge by the Committee following concerns raised by Interviewee 30 and the external auditors. Interviewee 30 believes that a significant programme of training is needed about the role of an Audit Committee and that there needs to be more stability in chairing and committee membership.
- 7.37 Interviewee 38 (a member of staff) told me that Croydon does not have a culture of involving officers with the relevant expertise when new initiatives are being considered by the Cabinet. It seems more like '*this is what we have decided to do, now make it work*'. Interviewee 38 said that there appears to be insufficient consideration of options, no real cost/benefit analysis and no seeking of advice about potential risks before a decision is made to launch an initiative, so the challenge for officers has been to make something work once it has been decided by members to do it.
- 7.38 Interviewee 38 said that it is not helped by an organisational culture that is very silo-based with no real attempt to get the right people around the table so discussions tend to be very transactional. If a private company was considering whether to invest £190m in a new project it would commission a coherent due diligence assessment to identify risk and what processes were required to ensure it worked. Interviewee 38 said in their view that this has not been the Croydon approach and that there has been no investment in building commercial expertise in the Council (or buying it in) so it was not possible to test the business case nor to commission any appraisal by officers before the Cabinet committed to a project. An additional problem has been that the Monitoring Officer has not always been at the top table as part of ELT, although in more recent years this has been the case. Interviewee 38's previous involvement as Head of Service as well as currently has been not so much to advise on a proposal but rather to transact and facilitate after the decision has been taken (through Interviewee 38's team and/or external support). Interviewee 38 considers that the Council really does need to invest a lot more in financial management training and monitoring for officers and members, and in more rigorous performance management generally.
- 7.39 Interviewee 3 (external to the Council) told me about the shock of the 'inadequate' rating by Ofsted in 2017. There had been advice from officers to the political leadership in preparation for the inspection that the Council could expect a 'requiring improvement' judgement from the Inspectors. The 'inadequate' judgement was the most significant thing that happened in Interviewee 3's time at the Council and had profoundly affected officer/member relationships ever since. When the (former) Leader was told about the Ofsted judgement he had been fair but very angry and it was clear that there had been a serious loss of trust in officer advice as a result. And then, from May 2018 it was a difficult and very challenging working environment for Interviewee 3 in particular because of a challenging relationship with the (former) Leader, and the (former) Cabinet Member for Finance and Resources had made it clear that he did not want Interviewee 3 getting involved

in the Council's finances – and that was solely his domain and that of the (former and current) S151 Officers.

- 7.40 Interviewee 6 (external to the Council) told me that in May 2018 the new administration had made it clear that it would be a member-led Council and some Cabinet members certainly became more hands-on and involved with operational matters. Interviewee 6 assumes that the (former) Chief Executive would have played the Head of Paid Service 'card' to stop what she regarded as members stepping over the line, particularly around staffing issues which she rightly saw as her business not theirs.
- 7.41 Interviewee 46 (external to the Council) told me that the (former) Cabinet member for Finance and Resources always wanted to get involved in detailed matters which he had no right to do as a Cabinet member. This did not just apply to finance issues but was across the board. In Interviewee 46's opinion, the (former) Cabinet Member for Finance and Resources would intervene at meetings of Scrutiny Committee and General Purposes and Audit Committee even though he was not a member of either, and would jump in before the officer responded to questions and that would compromise the officer being able to give a true answer. Interviewee 46 told me that the (former) Cabinet member for Finance and Resources had led for the Council on various unaffordable initiatives such as the insourcing of social care staff at a huge cost to the Council, but he did not ask for advice or information about whether this was affordable or in the taxpayers' interest. In Interviewee 46's opinion it was this Cabinet member who had made the decision to purchase the Croydon Park Hotel at a price that was greater than the professional valuation. To Interviewee 46's knowledge he overrode that professional advice. Interviewee 46's opinion was also that the (former) Cabinet Member for Finance and Resources had decided that the HRA should be charged £14m rather than the £12m that officers were recommending, and this was done without any challenge or scrutiny.
- 7.42 I asked Interviewee 46 whether the (former) Cabinet member for Finance and Resources had instructed that the estimate of new Band D properties in the Borough should be inflated as part of the budget-setting process, as had been claimed by another interviewee. Interviewee 46 confirmed that they had always tried to be helpful to the administration by being positive in the estimate of new properties, and it is a fact that despite austerity and the pandemic the number of new properties in Croydon had grown every year, increasing the Council tax base. Interviewee 46 has no doubt that the (former) Cabinet member for Finance and Resources would have liked even more positive projections and told me that at a meeting with Interviewee 46 and the (current) S151 Officer, the former Cabinet member for Finance and Resources had wanted to increase the estimate of 3,000 new properties but on that occasion he had been persuaded that they should stick with that estimate. However, Interviewee 46 said that there were other occasions when predictions were falsely inflated to mask underlying problems, for example there was in Interviewee 46's opinion pressure to falsely inflate the estimate of dividends from Brick By Brick to increase predicted income to the Council.
- 7.43 Interviewee 9 (external to the Council) had no doubt that the (current) S151 Officer and the (current) Monitoring Officer will claim that matters were beyond their control and that there had been bullying by key members that prevented them taking the necessary actions. It seems to Interviewee 9 that the Cabinet was totally dominated by the (former) Leader and the (former) Cabinet Member for Finance and Resources. In Interviewee 9's opinion the Council's Statutory Officers did not take the actions that they should have done because of the behaviour of the political Leadership but that is no excuse. Interviewee 9 said in their view that no one is going to come out of this investigation well and there will be confirmation of the collective corporate failure as described by the external auditor.

- 7.44 Interviewee 39 (external to the Council) told me to their knowledge that the (former) Cabinet member for Finance and Resources had attended all of the Finance Review Panel meetings and had promoted a consistent strategy to sort things out – ‘*just give the Borough more money as Croydon is underfunded by central government*’ – and had refused to look at internal issues about overspending and huge borrowing for risky ventures. Interviewee 39 was told that the (former) Cabinet member for Finance and Resources wanted the report to the General Purposes and Audit Committee on the (former) Chief Executive’s settlement package not to include the pension strain costs in order to reduce the headline number, even though that would not disclose the full amount actually paid. Interviewee 39 said in their opinion, that there were times when the (former) Cabinet member for Finance and Resources was acting as if he was the *de facto* S151 Officer rather than a Cabinet member.
- 7.45 Interviewee 47 (external to the Council) said that there appeared to be tensions between some members and officers, but this was not seen as the remit of the Governance Review Panel. The officer/member interface was not where the Panel wanted to focus although its importance was mentioned by most of the experts invited to speak to the Panel.
- 7.46 Interviewee 22 (external to the Council) told me that the conclusion of the Rapid Review Team was that none of the key senior officers involved - including the (former) Chief Executive, the (current) S151 Officer and the (current) Monitoring Officer - were sufficiently assertive in resisting or correcting poor governance. They were all internal appointments and lacked experience at this level. They were used to the Croydon culture where members are in charge and officers do as they are told. Interviewee 22 said that the Statutory Officers had all fallen short of their responsibilities to question, to challenge and if necessary to stop decisions being made and actions being taken that were clearly wrong. Officers’ reports were very bland and any negatives were played down. It appears also to be the case that Cabinet members had instructed that sections of some important reports were to be rewritten to play down concerns about what was being reported.

## Financial management

8.1.1 In a report published in June 2020 by the Institute for Fiscal Studies (the IFS) setting out the resilience of local authorities, the conclusion was that Croydon Council's growing debts and low reserves made it one of the country's least-prepared local authorities for dealing with an emergency such as coronavirus. While COVID 19 badly affected Croydon in terms of infection rates, the Borough ought not to have been as vulnerable as some other London Councils in terms of relative impact on local employment, revenue generation, vulnerable businesses, and the percentage of elderly population. The report's authors state that local authorities:

*'with higher levels of deprivation have residents who appear more vulnerable to the coronavirus crisis on a number of dimensions, potentially increasing service demands and challenges. Mental ill-health, homelessness and overcrowding, interventions from children's social services, and receipt of free school meals are higher in [local authorities] with high levels of more general deprivation. If, as evidence suggests, households already facing challenges and poverty are more vulnerable to the stresses and strains of lockdown and social distancing, the demand for support from [local authorities] and other public services could increase'*

8.1.2 The IFS devised a set of indicators grouped into different categories:

- assessed prevalence of COVID-19
- health-related risks
- housing and family-related risks
- revenue risks to: Council Tax; Business Rates; Sales, Fees and Charges; and commercial income
- financial resilience and commitments

8.1.3 The IFS report highlights some of the underlying financial issues that were facing Croydon before the pandemic crisis – a lack of reserves, £1.5billion debt, increased expenditure on social services – relative to other Councils. The report uses a 'dashboard' to look at the risk factors to compare Croydon with other London boroughs. The only area in which the IFS scored Croydon well was in the 'percentage change in level of reserves', where the Council budget for 2020/21 proposed increasing reserves by 22 per cent.

8.2.1 On 23 October 2020 the Council's external auditors (Grant Thornton) issued a Report in the Public Interest concerning the Council's financial position and related governance arrangements. This is one of the most serious steps a local authority's external auditors can take, and the Report drew to the public's interest the Council's deteriorating financial resilience, its low levels of reserves, its poor governance practice and significant overspending of its approved budgets each year.

8.2.2 The Report concluded that there had been opportunities in recent years where the Council could and should have taken action to mitigate the financial pressures that have led to the 2020/21 in-year pressures exceeding the Council's reserve position. Examples included:

- the Council failing to address the underlying causes of service overspends which during 2017/18, 2018/19 and 2019/20 had a combined overspend of £59.3 million. The overspends were reported in budget monitoring reports but there is little evidence of member challenge or holding officers to account for the underlying

reasons for the overspends or for taking action to address and mitigate the impact in future years.

- when unaccompanied asylum seeking children's service costs (UASC) were seen to exceed the funding available, the Council's response was to lobby government for increased funding. Whilst of itself this is appropriate action, the lobbying should have been combined with action to contain service delivery costs within the funding available. The financial pressure created by large numbers of UASC was clearly understood and reported however there is little evidence of challenge by members of the appropriateness of the costs being incurred either at the budget setting or budget monitoring stage.
- auditor concerns on the low level of reserves were reported to officers and to members of the General Purposes and Audit Committee in July 2018. The resulting recommendations remained outstanding at the end of August 2020 indicating a lack of urgency.
- the adverse qualification of the value for money conclusion was reported by the external Auditors to the General Purposes and Audit Committee in October 2019. Adverse qualifications are not common in local government and there was limited challenge of the auditor or officers at the meeting and no evidence that meaningful action was taken to address auditor concerns or to escalate the significance of the auditor concerns to the wider members of the Council.
- the 2019/20 Quarter 2 financial position reported to Cabinet in November 2019 showed an in-year overspend of £10.4 million. There was no indication that members understood the implication of using the remaining general fund reserve on in-year pressures and this in our view contributed to the lack of urgency.
- the 2019/20 Quarter 3 financial position reported to Cabinet in January 2020 reduced the in-year overspend by £8 million. This is an unusual movement and there was limited explanation in the report and no evidence of challenge to understand the validity of the adjustments to achieve the revised position.
- the outturn report for 2019/20 was reported to Cabinet in July 2020 and showed movements from the position reported previously. There was no evidence of members challenging the movements. The outturn report presented to the Financial Review Panel in June 2020 highlighted service overspends that indicated poor budget management and set out corporate adjustments of £17.7 million to reach the outturn position. None of the officers or members present at both the Financial Review Panel and the Cabinet meeting drew attention to the significant in-year corporate adjustments. The challenge of the outturn figures was limited and contributed to the lack of urgency in addressing the financial position.
- the outturn report did include a statement from the then Section 151 Officer that referred to the challenges identified in the budget together with commentary that if the proposed actions were not sufficient a Section 114 Notice would be required. Given the size of the financial gap, the Scrutiny and Overview Committee reviewed the report on 25 August 2020 where in response to a question the Section 151 Officer confirmed that she was not confident that a Section 114 Notice could be avoided. The Committee raised pertinent questions in relation to the financial position but chose not to refer the reports back to Full Council. The seriousness of the financial position would have warranted a Full Council discussion.

- the 2020/21 budget was presented at both Cabinet and Full Council in early 2020. The budget included a larger savings target than previously delivered and some optimistic income assumptions. From a review of the minutes there was limited challenge on the credibility of the budget and no evidence that members who were aware of the adverse auditor qualification brought this knowledge to challenge the proposed reserves position indicating a lack of understanding of the financial position.
- the Treasury Management Strategy aimed to deliver the Council's ambitious vision and involved a significant increase in borrowing with increasing risk to the Council. The longer-term risk to the financial position associated with the borrowing was not clearly set out nor was there challenge to the reported prudential indicators which show that the Council's approach to borrowing was at or above prudent levels.
- the Medium Term Financial Strategy for Croydon 2018-2022 established the Asset Acquisition Fund and the Asset Investment Strategy. The first purchase under the strategy was Croydon Park Hotel in August 2018 which was before the strategy was approved by Full Council in October 2018 using guillotine procedures. Good governance would require a strategy to be approved prior to the first purchase indicating a lack of transparency in the decision-making process.
- the Treasury Management strategy included the approach for the Council to borrow to fund the Revolving Investment Fund where significant amounts are invested through groups and subsidiaries. There was a lack of understanding of the complexity of the arrangements, the risk associated with the arrangements, how to safeguard the Council's investments, whether the increased borrowing achieved the intended outcomes or the impact of increased borrowing on the Council's future revenue position. The continued approval of the expansion of the Revolving Investment Fund showed a collective corporate blindness to the risks the Council is exposed to.
- London Borough of Croydon Holdings LLP was dissolved by compulsory 'strike off' due to a failure to file accounts. The facts or progress in remedying the situation have not been reported to members or subject to scrutiny.

8.2.3 The Report summarised the Council's financial management over recent years as follows:

*'The missed opportunities represent deficiencies in financial planning, financial management, risk assessment, communication between officers and Members and challenge from Members before approving the strategies and plans that have led the Council needing in-year external financial support. Action must be taken to restore the Council to a sound financial position supported by effective governance. The Council has experienced deteriorating financial resilience for a number of years with spending pressures within both Children's Services and Adult Social Care and low levels of reserves which created a significant financial challenge in 2020/21. The size of the financial gap in 2020/21 has increased due to the additional financial pressures as a result of the COVID-19 pandemic.'*

*The Council has reached the view that external support from the Ministry of Housing, Communities and Local Government (MHCLG) is required and a formal request has been made to allow the Council to treat some of the day to day expenditure as capital. As the Council's external auditor, we identified concerns*

*relating to the financial sustainability criteria of the value for money conclusion in 2017/18 and raised recommendations for improvements. The financial position deteriorated during 2018/19 and we issued an adverse qualification of our value for money conclusion. Our recommendations in 2017/18 and 2018/19 were not implemented and the financial position continued to deteriorate during 2019/20. The spending pressures identified in 2017/18 continued into 2020/21 and we wrote to the former Chief Executive in April 2020 setting out action we considered to be vital. At the end of August 2020, the Council had failed to produce a formal action plan or to respond to our audit recommendations effectively. A formal written response was received on 28 September 2020.*

*The Council has had an unsustainably low level of reserves for some time. The Council has had the lowest level of all London Boroughs of General Fund and Earmarked General Fund Reserves as a percentage of net service revenue expenditure and the reported level of reserves has continued to decrease in each of the previous three years. We reported the risk with low level of reserves to the Council and external parties such as the CIPFA Financial Resilience Index and the Institute for Fiscal Studies highlighted the risk. The Council has failed to adequately address the low level of reserves. In the past three years, the Council has reported significant service overspends of £39.2 million within Children's and Adult Social Care. The Council used the flexibility granted by Government to apply capital receipts to transformation schemes in both Children's and Adult Social Care. Despite applying significant amounts of transformation monies (£73 million) in the past three years the Council continues to experience overspends in both departments and planned significant growth funding in the original 2020/21 budget. There is little evidence that the transformation monies have been used to achieve the Government's intended aims of this capital receipts flexibility, namely, reducing demand, delivering savings or reducing costs. The impact of the overspends has been masked by both the accounting treatment of the Dedicated Schools Grant deficit (which we disagree with) and the use of the flexible capital receipts. The Council has failed to deliver real savings in Children's and Adults Social Care. The budget monitoring reports during 2019/20 showed significant overspends, which reduced following 'corporate adjustments' of £17.7 million. The reports were accepted by Members without an appropriate level of challenge to continuing service overspends, continued Unaccompanied Asylum Seeker Children (UASC) overspends or the validity of adjustments made to improve the outturn position. The Council set the 2020/21 budget in March 2020 prior to the COVID-19 pandemic being declared.*

*There was insufficient challenge from Members on the financial risks in the budget, credibility of the planned level of income from third parties and deliverability of the savings plan. The Council's governance over the budget setting and monitoring has not been good enough. In response to both the growing financial gap and our letter, the Council established a Finance Review Panel in May 2020 and retained a Financial Consultant. The Financial Consultant has reviewed budget setting, monitoring and reporting processes and identified areas for improvement. Initial progress was swift and a budget gap for 2020/21 of £65 million was identified together with £21 million of in-year savings to narrow the gap if the savings were achieved. The position was reported to Cabinet in July 2020 and subject to Scrutiny and Overview Committee call-in in August 2020. Neither meeting referred to the significant fact that the budget gap exceeded the available reserves, to Full Council. In our view this was a failure of governance and showed a lack of understanding of*

*the urgency of the financial position. In September 2020, following the departure of the former Chief Executive and progress stalling on identifying deliverable savings, the Section 151 Officer drafted, but did not formally issue, a section 114 report which was discussed with the then Leader, the Deputy Leader, the then Interim Chief Executive and Monitoring Officer who agreed to amendments to the 2020/21 General Fund Budget via Cabinet and Full Council in September 2020.*

*The Council has increased the level of borrowing significantly in recent years (£545 million in three years) and used the borrowing to invest in companies it established and to purchase investment properties. The strategy for investing in properties was approved at Full Council using guillotine procedures meaning there was insufficient time to discuss and challenge the strategy and the first purchase was made two months prior to approving the strategy. The Council's approach to borrowing and investments has exposed the Council and future generations of taxpayers to significant financial risk. There has not been appropriate governance over the significant capital spending and the strategy to finance that spending. The Council established a number of companies including wholly owned and part owned companies. The Council's governance and oversight of the companies shows insufficient rigor and control. Despite heavy investment from the Council, the Council has not yet received any significant return.*

*There has been collective corporate blindness to both the seriousness of the financial position and the urgency with which actions needed to be taken. The Council commissioned a review of its governance arrangements in March 2020 which concluded that improvements were needed to the culture around decision making. We agree with this recommendation and we note that we have not seen an improvement in the culture of decision making as it relates to financial sustainability. 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 addressing 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. Councils are statutory entities which must follow the law. The law is very clear on the legal requirement for councils to set a balanced budget. The Council's fragile financial position and weak underlying arrangements have been ruthlessly exposed by the impact of the COVID-19 pandemic. Had the Council implemented strong financial governance, responded promptly to our previous recommendations and built up reserves and addressed the overspends in Children's and Adult Social Care, it would have been in a stronger position to withstand the financial pressures as a result of the COVID-19 pandemic. The Council needs to urgently address the underlying pressures on service spends and build a more resilient financial position whilst also addressing the long-term financial implications of the capital spending and financing strategy together with the oversight of the Council's group companies.'*

- 8.3 Subsequent to the issuing of the Report in the Public Interest the Council's (current) S151 Officer issued a Section 114 Notice on 11 November 2020. In the formal Notice, the S151 Officer said:

*'Since the 23 October 2020, mindful of my statutory duty under Section 114, I have kept the need to issue a S114 Notice under constant review. It is now my professional judgement as the [Chief finance officer] for Croydon Council that in the current financial year (2020- 2021), despite the ongoing conversations with [Ministry of Housing Communities and Local Government] and the presentation of amendments*

*to the General Fund budget at Cabinet on the 21 September 2020, that the forecast expenditure continues to significantly exceed resources, and plans to rectify this financial position are insufficient, leaving the council with a significant unfunded financial deficit this year. Therefore I have a duty to issue all members of the council with this S114 Notice.'*

Croydon is only the second local authority in England in 20 years to issue a S114 Notice. To date, and despite the demands of additional Council spending this year to deal with COVID-19, Croydon remains the only Council in England to have issued a S114 Notice. It prohibits all new expenditure by the Council with the exception of expenditure on statutory services.

- 8.4.1 Interviewee 48 (external to the Council) told me that there is always a need for clarity about where the roles and responsibilities of members and officers begin and end. Towards the end of June/beginning of July 2020, Interviewee 48 had attended all the meetings of the Financial Review Panel which were held in private and had been encouraged by the papers presented by officers and the discussion by members which seemed to show that there was an appreciation of the seriousness of the situation and the need for urgent action. Interviewee 48 had been disappointed to watch the webcast of the Cabinet meeting in July 2020 and to see a different picture being presented in public by those present. There was clarity at the private Finance Review Panel meetings that urgent action was needed to address the serious financial situation and that there would need to be a bid for government financial support but there was no acknowledgment of the need for government funding at that public Cabinet meeting. Interviewee 48 told me that this very much goes to the 'collective corporate blindness' comment in the RIPI. Interviewee 48 had debrief sessions with the (current) S151 Officer and sometimes the (former) Chief Executive after every Financial Review Panel meeting, and often asked whether difficult conversations with members were happening somewhere else as they were not happening at these and other meetings. The answer was 'yes', and there seemed to be an expectation by the officers that difficult matters that concerned them should not be raised in public and that everyone should be on their best behaviour at such meetings.
- 8.4.2 Interviewee 48 had seen the Report of the Financial Consultant to the General Purpose and Audit Committee and was impressed with his analysis of the Council's financial processes set against CIPFA standards. His report did very appropriately point to a number of aspects of the Council's financial process that fall short of the standards set by CIPFA. Budget monitoring arrangements at Croydon are a particular weakness, and Interviewee 48 said that these will need to be addressed through the implementation of the RIPI Action Plan agreed by Council.
- 8.5.1 Interviewee 49 (a member of the Executive Leadership Team) told me that there had been a very good working relationship with the (former) Executive Director Resources and S151 Officer and others in the Council, and there had been great surprise when he resigned in November 2018 and then left the Council in February 2019. Interviewee 49 described how the (former) Chief Executive had covered the S151 part of that Executive Director Resources role on an Interim basis with another officer who was the Deputy to the Executive Director, who had then been required to present the 2019/20 budget to Cabinet in February 2019 even though the (former) Executive Director Resources and S151 Officer had led on its preparation and was still employed [REDACTED] by the Council. Interviewee 49 told me that it was widely understood that the (former) Chief Executive and the (former) Executive Director for Resources and S151 Officer wanted to signal that another officer had taken over as the new S151 Officer. I was then told by Interviewee 49 that the S151 Officer role was covered on an Interim basis for a period of six months and in that time an Interim Executive Director for Resources was also appointed who was not the new S151 Officer.
- 8.5.2 A formal appointment was made to the S151 Officer post in October 2019. Interviewee 49 was aware that the Director of Finance was first appointed on an interim and then on a permanent basis

to the S151 Officer role and had asked the (former) Chief Executive for a deputy to be appointed to take on some of the work of the Deputy S151 Officer post which was vacant. It was understood that the (former) Chief Executive had been adamant that there could not be a deputy. Interviewee 49 told me a Deputy S151 Officer was only recently appointed on an Interim basis. Interviewee 49 said that for over a year the Director had been covering both the former role of Deputy S151 Officer and the new role as S151 Officer with Heads of Finance covering the S151 Officer role in time of absence. Interviewee 49 told me that the (former) Cabinet member for Finance and Resources and the (former) Chief Executive did not have a good relationship so when they met it was widely known that the S151 Officer was expected to be in the room as a 'third party' to act as a witness and a bridge between the two of them. Interviewee 49 also said it was known that if the S151 Officer told the (former) Cabinet member for Finance and Resources something he did not like or would not accept he would then involve the (former) Leader to overrule or change things. He had been described to Interviewee 49 as an incredibly hands-on Cabinet member and sometimes overstepped the mark. Interviewee 49 gave the example of the (former) Cabinet member for Finance and Resources regularly attending both Scrutiny and Overview Committee and General Purposes and Audit Committee meetings even though he was not a member of either and usually answered the questions put by members to officers, making it very difficult for officers to say anything different to what he had said, even if he had been inaccurate.

- 8.5.3 Interviewee 49 said that they were aware that the (former) Cabinet member for Finance and Resources had become very involved in procurement decisions (an example being the appointment of the Enforcement Agents Contract) that are normally left to officers and did not always listen to or follow officer advice. Another example Interviewee 49 shared with me was that Deloitte's had had to be brought in (at cost) to persuade the (former) Cabinet member for Finance and Resources that it was not a good idea to invest in an aircraft hangar at Biggin Hill as he would not accept the professional advice of Council officers.
- 8.5.4 Interviewee 49 confirmed that the (former) Cabinet Lead for Finance and Resources was not happy with the (current) S151 Officer briefing other Cabinet members about the Council's financial situation and that he always wanted presentations to Cabinet to be a 'double act' of the (current) S151 Officer and him. Interviewee 49 said they had been told that the (former) Cabinet Member for Finance and Resources always wanted to paint the rosier picture possible and Interviewee 49 was aware that he had been heard to say things like - *'don't tell them how bad it really is or that it's getting worse'*.
- 8.5.5 Interviewee 49 told me that the (current) S151 Officer had told them that the (former) Cabinet member for Finance and Resources had given a direction to *'burn some slides'* that had references to a S114 Notice contained in them. Interviewee 49 said they were aware that the (former) Cabinet member for Finance and Resources always appeared very resistant to officer advice. It was known to Interviewee 49 that the (current) S151 Officer had great difficulty last year getting the (former) Cabinet member for Finance and Resources to accept that there should be a year-on-year contribution to General Fund Reserves. The (current) S151 Officer did manage to get the Cabinet to agree to make a provision in the 2020/21 accounts of a £5m increase to General Fund Reserves.
- 8.5.6 Interviewee 49 told me that it was well known that the (current) S151 Officer had been very upset in September 2020 on the second day of the (Interim) Chief Executive's time at the Council, when the (former) Cabinet member for Finance and Resources had implied that Grant Thornton's letter to the (former) Chief Executive in April had been sent because there was a lack of trust by them in the ability and competence of the (current) S151 Officer. Interviewee 49's opinion is that it was also very well known that both the (former) Cabinet member for Finance and Resources, and the (former) Chief Executive wanted only good news stories and both were very upset about *Inside Croydon's* negativity and criticism of the Council. In Interviewee 49's opinion, issuing a S114 Notice was regarded by both of them as totally unacceptable and the ultimate bad news, and they

did not support the (current) S151 Officer's conclusion that this was appropriate in the circumstances. Having said that, it was also the opinion of Interviewee 49 that the (former) Chief Executive had never really been involved in any discussions about the Council's finances and usually left all that to the former S151 Officer and had left the (former) Cabinet member for Finance and Resources to drive the agenda. Interviewee 49 was aware that the (current) S151 Officer had considered issuing a S114 Notice earlier but had described the reasons for not doing so because there were still ongoing discussions with MHCLG about the Council's finances and the help that might be available.

However, in Interviewee 49's opinion, it is clear that the (current) S151 Officer was pressured out of taking such action by the (former) Cabinet member for Finance and Resources and the (former) Leader. Interviewee 49 was of the view that even if the (current) S151 Officer had decided to issue a S114 Notice there would have been little or no support and may have been prevented from doing so.

- 8.5.7 At the start of the current financial year, Interviewee 49 was aware that the (current) S151 Officer had had conversations with both CIPFA and MHCLG about the conclusion that a S114 Notice needed to be issued, and then in August 2020 this was discussed with the Finance Review Panel when the (current) S151 Officer was encouraged by the Panel to do this. On the Friday before the August Bank Holiday (28 August 2020) Interviewee 49 was aware that the (current) S151 Officer had drafted a S114 Notice and on the 1st September 2020 the (current) S151 officer and the (former Interim) Chief Executive went to talk to the (former) Leader and (former) Deputy Leader to explain what was involved (the current Monitoring Officer was on holiday so did not attend). The discussions continued after this meeting with MHCLG, and the Finance Review Panel was urging the S114 Notice be issued. Interviewee 49 was aware that some further conversations about what the (current) S151 Officer was planning to do were held with the (current) Leader, ELT and the (current) Cabinet on the 28th October 2020.
- 8.5.8 Interviewee 49 said that in their opinion, the (current) Leader had been reluctant to agree to issuing the S114 Notice in conversation with the (current) S151 Officer and then, having agreed to it, she had reviewed her position the next day. Interviewee 49 told me that the (current) S151 Officer then spoke again with CIPFA on the 29 October 2020 who were also not supportive of issuing the S114 Notice at that time. Interviewee 49 said that it was known that CIPFA subsequently did become supportive just before the (current) S151 Officer issued the S114 Notice on 11 November 2020. Interviewee 49 told me that in their opinion that this was the right thing to do at that time. Also they told me that until COVID hit and the Council had to act decisively, there had not previously been any real commitment to effective financial management and the result was consistent overspending particularly by the big 'demand led' Directorates like Children's Services and Adult Care. Previously, in Interviewee 49's view, ELT had not really been interested or engaged in the Council's financial situation and the (former) Chief Executive had, to the knowledge of Interviewee 49, actively discouraged the (current) S151 Officer from opening up any discussion about the budget and the Council's finances.
- 8.5.9 As part of the S114 Notice a Spending Control Panel has been set up, chaired by the (current) S151 Officer or designated deputy to ensure that no unnecessary expenditure is authorised. Anything that comes to the Panel is required to have been scrutinised and authorised within the relevant Directorate before being sent to the Panel. The opinion of Interviewee 49 is that the behaviour of Directors and Executive Directors has been appalling and they have actively lobbied for exceptions. There have even been Purchase Orders set up for expenditure incurred in 2019 - or even earlier - for expenditure that had not been progressed. It is clear to Interviewee 49 that there is no commitment to financial accountability and no sense of corporate responsibility in the Council. The (former) Chief Executive used to stipulate that there should be no overspending but there always had been and no one had ever been held to account. Interviewee 49 is supporting

others to hold the line on the S114 Notice requirements but feels they have all become very unpopular and so have become totally focused on following the statutory requirements and supporting the (current) S151 Officer refusing to give in despite the enormous pressure so that the Council is now moving in the right direction.

- 8.5.10 This experience has exemplified to Interviewee 49 exactly what the external auditors meant by 'collective corporate blindness' whereby very senior Council officers, Directors and Executive Directors just do not see the 'big picture' and have failed to understand that lots of little things outside the rules have contributed to the serious problems that the Council is now facing. Interviewee 49 said that if you add this cultural behaviour to the problems resulting from the Ofsted judgement, Brexit and COVID it has been the 'perfect storm'.
- 8.5.11 Interviewee 49 was aware that the (former) Cabinet member for Finance and Resources had wanted to meet the external auditors on his own on 9 October 2020, but Grant Thornton was uncomfortable with meeting a councillor without officers present. Interviewee 49 was told that the (current) S151 Officer attended the meeting with the (current) Executive Director for Resources and Monitoring Officer and was also told that it was at this meeting that the (former) Cabinet member for Finance and Resources tried to persuade the external auditors that it was not necessary to issue the Report in The Public Interest. Interviewee 49 believes it was later that same night that the (former) Cabinet member for Finance and Resources resigned.
- 8.6.1 Interviewee 3 (external to the Council) told me that it was clear that Croydon had serious problems with its finances and that it had been historically underfunded by government. There was a challenging environment given the location of the Home Office in the Borough and the needs of the Borough's UASC population. Interviewee 3's time at the Council began when the Council's Reserves were at £10.4m and debt was at £1bn. It was clear to Interviewee 3 that there needed to be systemic and cultural change to deal with the financial problems facing the Council, and the last thing that was needed was the traditional 'salami slicing' of budgets. In Interviewee 3's opinion, members found it very difficult in the 2019/20 budget preparation to make decisions about cuts in spending and were reluctant - as Interviewee 3 saw it - to cut frontline services to put money into the bank (Reserves). According to Interviewee 3, up until this point the Council had maintained its reserves at 2016 levels and had been able to set an annual budget. Interviewee 3 said that their relationship with the (former) Cabinet member for Finance and Resources deteriorated over this period. Interviewee 3 had raised the issue of the way in which he was treating Interviewee 3 - excluding Interviewee 3 from discussions about the Council's finances or the work of the Asset Board which he chaired - along with the (former) Deputy Leader and the (former) Leader on a regular basis. Whilst the (former) Deputy Leader had been sympathetic, the (former) Leader had provided no support for Interviewee 3. Interviewee 3 and the (former) S151 Officer had found it difficult to hold their positions on budget management with ELT when the (former) Cabinet member for Finance and Resources would meet all Executive Directors and other Directors on a weekly basis and give directions including agreeing additional funding if a reasonable argument was put to him.
- 8.6.2 In August 2019 the (then Interim) S151 Officer told Interviewee 3 that the 2019/20 Q1 figures showed significant overspends in every Directorate - £13m in Children's Services and £10m in Adults and Place (which traditionally underspent). Interviewee 3 advised the (former) Leader about this and the (current) S151 Officer let the (former) Cabinet member for Finance and Resources know the situation. Interviewee 3 then was party to an emergency meeting of the ELT and CLT in September 2019, and the 'Sprint' sessions involving ELT and Directors to identify opportunities to reduce in-year expenditure. The key high spend areas were targeted – staffing, agency staff, EA/TA, Children's Services, procurement, placements, SEN, etc. Interviewee 3 described to me the introduction of recruitment controls and spending controls, and in October 2019 a new Programme Office was set up to manage the process and programme of work.

- 8.6.3 Interviewee 3 stated that they met the external auditors for the first time in October 2019 before the General Purposes and Audit Committee meeting on 9 October 2019. The key issue the auditors raised with Interviewee 3 was the ‘value for money’ conclusion in respect of the DSG and Children’s Services (as these were still ‘inadequate’). The minutes of the General Purposes and Audit Committee meeting also indicate that the external auditors raised the Council’s level of reserves and went into considerable detail about the impact of UASC (valued at around £20m). In Interviewee 3’s opinion the external auditors informed General Purposes and Audit Committee that they were content with the measures that the Council was taking to address the problems including cross-party lobbying of the Government about UASC funding. Interviewee 3 said that the external auditors had stated at the General Purposes and Audit Committee meeting that if the UASC issue was addressed it would fundamentally change the Council’s financial position.
- 8.6.4 The Council’s response to these concerns was to initiate a £40 million savings programme for 2020/21 which had included an additional £5m to be put into Reserves. Interviewee 3 said that there had been considerable challenge from members throughout the 2020/21 budget-setting process, as it was necessary to reduce spending in both Children’s and Adults Services and really drive the partnership and localities work with the NHS. In Interviewee 3’s opinion the required focus on reducing spend in Children’s Services adversely affected the (former) Chief Executive’s working relationship with the (former) Executive Director of Children, Families and Education. In Interviewee 3’s opinion he had done a great job as DCS with the Directorate’s culture and service improvement, but budget control was not his strong point. In February 2020 the (current) S151 Officer informed Interviewee 3 that Children’s Services had gone from a forecast of spending within budget for 2019/20 to a projected overspend of £15m in 2019/20. In March 2020 the Council went into COVID lockdown and Council Gold was set up which the (former) Chief Executive chaired.
- 8.6.5 On April 7 2020 the (current) S151 Officer had informed Interviewee 3 that in the course of the regular catch-up with Grant Thornton they had raised their concerns about the Council’s ability to deliver the 2020/21 budget as there was no guarantee that the government would underpin all COVID costs, together with the significant loss of income and the inability to deliver savings. The external auditors had informed the (current) S151 Officer that they were considering the issuing of an informal recommendation. On 8 April 2020 Interviewee 3 spoke with the (former) Leader and the (current) S151 Officer spoke with the (former) Cabinet member for Finance and Resources. Interviewee 3 said that it had been suggested to the (former) Leader that the Council needed to treat this financial crisis in the same way that it had responded to Children’s Services – accept the situation, be open and transparent, get the very best finance people in to support, set up an external panel of experts and develop an improvement plan.
- 8.6.6 Interviewee 3 is aware that the (current) S151 Officer was asked to set up an urgent meeting with Grant Thornton. The first time that Interviewee 3 was aware that the (current) S151 Officer had discussed the possibility of a S114 Notice was on 8 April 2020. On 9 April 2020 Interviewee 3 met for the second time with the external auditors at Grant Thornton’s offices. The outcome of that conversation was confirmed in writing on the same day and a copy was sent to the (former) Leader. The (current) S151 Officer also sent a copy to the (former) Cabinet member for Finance and Resources and also escalated the issue to the Chief Executive of LB Greenwich and the London Councils lead for Finance. On 1 May 2020, Interviewee 3 met with Grant Thornton to agree the approach to address the external auditor’s concerns – establishing a Finance Review Panel, independently chaired and commissioning a full ‘root and branch’ review of the Council’s financial systems, processes and governance. The Panel also included another Chief Executive, the Chief Executive of the Croydon NHS Trust (given the Council’s work on service integration), the (former) Cabinet member for Finance and Resources and the (former) Deputy Leader. Interviewee 3 said that there had been a lot of support from colleagues in other Boroughs and that the Panel

was an important step in getting back control of the budget from the (former) Cabinet member for Finance and Resources.

- 8.6.7 The (former) Leader had made it clear to Interviewee 3 that he wanted to handle all internal and external messaging about the situation. The Council had received the letter from Grant Thornton on 22 April 2020 but by that time it had already actioned the outcomes of the meeting with Grant Thornton and was putting in place the Council's response. The Finance Consultant was commissioned on 11 May 2020 to undertake the 'root and branch' review, and the Finance Review Panel had its first meeting on 21 May 2020 where immediate savings measures were presented. The local NHS Trust played its part in assisting the Council and assisted with funding for social care. The Council was also successful in its lobbying for UASC funding.
- 8.6.8 In April 2020, a budget deficit of £64m for 2020/21 was being forecast as a result of COVID impact and other factors. Interviewee 3 had informed the (former) Leader that the Council had to be looking at a 15% in year headcount reduction, coupled with immediate savings in other corporate areas as that was necessary to demonstrate to MHCLG that the Council was doing everything it possibly could to reduce the budget deficit.
- 8.6.9 Interviewee 3 said that they had also insisted that the Cabinet and ELT needed to meet together on a regular basis to monitor the situation and to input to the work of the Finance Review Panel. This did not happen in April 2020 but the (former) Leader did agree to this in May 2020. In April 2020 the (current) S151 Officer started discussions with MHCLG highlighting the issues and the possibility of a capitalisation direction. On 30 July 2020 Interviewee 3 met with a representative of MHCLG to discuss a 3-year strategy in this respect. Interviewee 3 said that it was an incredibly stressful time - dealing with the finance issues and with COVID in parallel. Interviewee 3 had pushed back on the headcount reduction exercise that resulted in staff feeling extremely upset. In June, the former DCS announced he was leaving. The (former) Leader was then under considerable pressure from the unions.
- 8.7.1 Interviewee 6 (external to the Council) said that the financial situation at Croydon had always been challenging since Interviewee 6 joined the Council a number of years previously. General Fund Balances then were £4.5m and earmarked Reserves were £8.5m. So when austerity started in 2010 the Council's financial reserves were still low and a cause for concern. Interviewee 6 said that the Council has since undertaken a range of transformation programmes to try to get to grips with its financial problems, and each of these programmes was designed with the dual purpose of making savings in the short term and making the Council more financially sustainable in the longer term. In February 2017 a 3 year budget was presented to Cabinet. This included significant growth in the People Directorate services in 2017 and, given that the grant settlement to 2020 was known, there was a clear picture of the financial challenges facing the Council. Growth in People Directorate services was then limited in the following two years by managing demand and being successful with the prevention strategy, but the whole strategy was derailed by the Ofsted 'inadequate' judgement in 2017.
- 8.7.2 Interviewee 6 said to me that there is no doubt that the Ofsted judgement was a real shock to everyone involved and getting to a 'good' judgement next time there was an inspection was a priority for the whole Council, and not just for Children's Services. The (former) Chief Executive had handled the fallout well and had provided Leadership for the improvement journey. This included significant additional funding being allocated to Children's Services. The clear focus for the (former) Executive Director of Children Families and Education (the previous Director had left) was to get to a 'good' Ofsted judgement and it was not clear that there was an exit strategy past the next Ofsted inspection in terms of cost reductions, so Children's Services costs continued to rise and that may still be the case. Interviewee 6 said to me that it was clear that that there had been a knock-on impact of the additional spending on Children's Services with other Cabinet

members looking for investment in their own portfolios. In 2018 a new Financial Strategy for 2018-22 was produced. Interviewee 6 explained that the introduction to the Strategy had clearly highlighted the reducing levels of the Council's Reserves and had set out a strategy to address that issue that included earmarking Collection Fund surpluses and any future dividends from Brick By Brick to Reserves. At that time Interviewee 6 made it clear that the Council was facing very serious financial challenges and the 'Graph of Doom' was presented to members to reinforce the point, but at that stage the Council was not close to a situation that required a S114 Notice to be served on the Council.

8.7.3 In Interviewee 6's view it would be fair to say that a more traditional approach to budget setting was adopted when the prior Chief Executive was in post. There were the usual away-days with the Labour Group, individual Directorate meetings with Cabinet Leads and the (former) Cabinet member for Finance and Resources etc. This continued when the (former) Chief Executive was appointed as Chief Executive, but the Ofsted judgement changed everything and it seemed to Interviewee 6 that the (former) Cabinet member for Finance and Resources was trying hard to manage the pain of his Cabinet colleagues about the Ofsted judgement by ensuring significant investment was made in Children's Services. In Interviewee 6's opinion the (former) Cabinet member for Finance and Resources could also have been trying to demonstrate how influential he could be. Interviewee 6 said that the 2018/9 budget actually had a considerable element of growth allocated to social care given pressures in the 2017/18 outturn, and there were serious attempts to control expenditure in other areas with the Impower work in Children's Services and an LGA Review of Adult Social Care costs, but despite this, in Interviewee 6's view the commitment of the officer leadership of the Children's Services and Adult Social Care Directorates to long-term sustainability was never secured. This was exacerbated in the view of Interviewee 6 by the Council agreeing to help out the Health sector in the Borough which was in serious financial difficulties at that time and needed financial help from the Council. Interviewee 6 believes that the Council probably did too much in that regard.

8.8.1 Interviewee 46 (external to the Council) had worked for a number of Chief Executives at Croydon Council over the years, including the previous Chief Executive who preceded the (former) Chief Executive. Interviewee 46 said that that individual had a finance background and was very much a process person, and they had worked hard to identify the underlying problems with the Council's budget but, having done so, no action was taken to deal with the problems. The Council, in Interviewee 46's opinion, has always preferred 'spin' over substance and has always refused to accept, never mind encourage, reasonable challenge. Interviewee 46 had thought a great deal about everything since leaving Croydon and is still not clear whether it was members not being told what was happening, or members not wanting to know or officers not doing the right thing and telling members how bad things were even if they did not want to hear it. It was probably a mixture of all of those. In Interviewee 46's view pre-COVID budgets did contain a lot of risk but there was always a window to take action, but COVID took that window away. Croydon's funding relative to the demands was way out of balance, and it had adopted a range of ways to manage that dynamic, some of them quite risky. But ultimately the budget proved to be undeliverable, and so it can be seen that the (current) S151 Officer's duty could not be complied with. Whichever it was, in Interviewee 46's view, the Finance function lost its impartiality and should have done more to reflect its statutory responsibilities and to speak up even if it was discouraged to do so. To illustrate how difficult it was, Interviewee 46 shared with me the experience of watching when the (former) Cabinet member for Finance and Resources was interrupted at meetings so that he could be put right or challenged, that he simply paused for a moment, then carried on regardless. Interviewee 46 explained that after a while people do stop trying – that may be wrong but it is what happened. The (former) Chief Executive was very different to her predecessor, and seemed content to leave financial matters to the (former) S151 Officer and then to the current one, to Interviewee 46's knowledge without ever challenging or questioning what they were telling her. The (former) Chief

Executive may have been charismatic in her way but she was not good at pulling everything together. She and Croydon seemed much more interested in ‘shiny things’ and good news stories in the media.

- 8.8.2 In Interviewee 46’s view, the (former) Chief Executive had ignored the fact that Croydon Council had lots of poor systems and that even the good systems were often bypassed or ignored. Interviewee 46 does not believe that the (former) Chief Executive really understood finance and did not make the effort to find out more and left it to the (former and current) S151 officers to sort out any issues. Interviewee 46 said they believed that the (former) S151 Officer was very clever and creative and was behind many of the initiatives that were launched by the Labour administration. He could make it all look sensible and was reassuring but, when he left, the (current) S151 Officer, in Interviewee 46’s opinion struggled in contrast to her day job as Director of Finance at which she was very good. In Interviewee 46’s view she did not have the experience and expertise to manage the S151 Officer role effectively. Interviewee 46 said that in their opinion she was not in the same position as her predecessor who had the support and the capacity to do things that the (current) S151 Officer did not have and she did not have a deputy who could have freed her from the mundane stuff so that she should focus on the S151 Officer role. She was also not well supported by the other Statutory Officers or by senior members. Even the best and most experienced S151 Officer, in Interviewee 46’s opinion, would have struggled in that situation.
- 8.8.3 Interviewee 46 said that it was the (former) Cabinet member for Finance and Resources and the (former) Leader who had put a number of new initiatives together without the necessary professional advice and without having them costed. There seemed to be no concern whether any of these initiatives were affordable so, for example, the introduction of the London Living Wage - a great thing to do in principle - was never costed and never assessed for its affordability.
- 8.8.4 Everyone accepted that the Council was underfunded and that its reserves were very low, so initiatives like a Development Company were launched with the expectation that the income stream and dividends that would result would compensate for the Council’s weak financial position, but the reality is that in Interviewee 46’s opinion officers were not clever enough to know what they were doing, and dissent or challenge was dismissed. Interviewee 46 also believed that the problem was that no one at the top, not the political leadership and not the (former) Chief Executive, wanted to hear any bad news and they buried their heads in the sand, bad news was stifled and people were instructed not to tell the other Cabinet members how bad it really was. The Finance Team was under-resourced and had been reduced as part of the savings to put resources into Children’s Services after the Ofsted judgement in 2017. The Finance Team’s ability to effectively challenge and play an impartial role in the management of a £1 billion annual budget was severely compromised. Interviewee 46’s reflection is that Croydon has always thought that it was much cleverer than it really is. There is a serious cultural problem as it is deeply embedded in the organisation that it is always some else’s problem - *‘not mine, or it is someone else’s responsibility to do something so I will keep my head down’* - and there is no commitment to corporate or collaborative working, with everyone having a silo mentality from the (former) Chief Executive and (current) Executive Directors down.
- 8.8.5 Interviewee 46 told me that a £60m budget ‘gap’ is simply unmanageable and the response of officers in their opinion had been to say that it really is not their problem which they cannot make a significant contribution to solving and that something else will have to happen – probably more borrowing. Interviewee 46 commented that if the ‘gap’ had been £2m or even £10m people could have seen and accepted that with everyone making their contribution it was solvable, that it could be done by everyone doing their bit by cutting back on postage, or less overtime or other acceptable measures. But £60m? It is just not feasible. Interviewee 46 said that the problem was well known but ignored, and any messages of ‘doom and gloom’ were filtered out increasingly by elected members and the (former) Chief Executive. Even many of those savings that were

proposed as a contribution to solving the problem were not real and many were no more than accounting adjustments.

8.9.1 Interviewee 1 (a former and/or current member of the Cabinet or Committee Chair) told me that in March 2020 the Council had the Ofsted report with a 'good' judgement which was excellent news, and separately had already commissioned an LGA Corporate Assessment with a particular focus on financial management but again COVID intervened and the review was postponed. Interviewee 1 said if that had that happened it could have been of great assistance in sorting out the Council's financial difficulties. So there were missed opportunities that were not entirely the fault of the Council. Interviewee 1 said that the administration did know about and had been concerned at the low level of reserves, and the (current) S151 Officer has confirmed that there was a strategy for building up reserves year on year. In preparing the 2020/21 budget a year ago the work of the Cabinet was the most intense ever, including two Cabinet/ELT away-day sessions in November 2019 and January 2020, to produce a budget that included £5m for Reserves and which was then voted for by all 70 councillors. With hindsight, it is clear that although there had been good briefings from the (current) S151 Officer about the cost of COVID, the Leadership and the Cabinet were not being kept informed just how serious the Council's worsening financial situation was, most importantly in respect of the growing risk of Brick By Brick being late with or missing its loan repayments.

8.9.2 Interviewee 1 said to me that they had only found out in August 2020 that there had been a report in November 2019 by Impower about the Council's budget that Interviewee 1 believes had been 'buried' by officers and was only given a copy of this report in August 2020 by a member of ELT who was very nervous about giving Interviewee 1 this report and was worried about possible repercussions. After the (former) Chief Executive had left, ELT members had told Interviewee 1 that they had not been allowed by her to speak out about a number of issues and that they wanted that on the record. Interviewee 1 said that it is astonishing that it is now known through the RIPI that the (former) Chief Executive did not respond to the Grant Thornton letter to her in April 2020. There was clearly a serious breakdown between the (former) Chief Executive and the Council's external auditors. It was a good move by her early in 2020 to set up the Finance Review Panel, but it was too little too late to really deal with the challenges with the Council's budget and the financial situation generally. Interviewee 1 said that the Cabinet was being kept closely informed about the worsening COVID financial pressures and emerging Directorate overspends but not about Brick By Brick and the full extent of the Directorate overspends, despite constant Cabinet member pressure to reduce the cost of, for example, placements. In March 2020 Croydon went into a Gold Command structure and the (former) Chief Executive, as Gold Commander, and the Council generally did very well in managing the crisis of COVID, but the (former) Chief Executive should have stood Gold Command down eventually as it had become the mechanism to micro-manage every budget decision [REDACTED], and she should have focused on more strategic issues including the Council's deteriorating financial situation.

8.10.1 Interviewee 11 (a former and/or current member of the Cabinet or a Committee Chair) said that there had been a lot of reflection about what has happened in Croydon and why the Council is in the current situation. Interviewee 11 said that, in reality, Croydon has had problems with its finances for probably the last thirty years. When Labour first took control of the Council 26 years ago there was already serious underfunding by central government and consequentially low reserves. That pattern has continued ever since and had got much worse when austerity really hit Croydon hard in 2010. Croydon has changed considerably over the years and although it continues to be seen as an outer London Borough the reality is that it has inner city problems much like its neighbour Lambeth which has twice the per capita funding that Croydon receives, and Croydon has the additional problems of a Home Office Asylum Centre and large numbers of UASCs. So the context is really important and the potential for flexibility in the approach to financial management has been severely hampered by that context. Interviewee 11 believes that elected

members are very dependent on the advice they are given by professional officers. However, Interviewee 11 does now question whether members were given the right information about the scale of the Directorate overspending in 2019/20 and the growth pressures when the 2020/21 budget was being developed. There was an iterative process of joint Cabinet/ELT ‘away days’ with a lot of scrutiny and questions, for example about officer assumptions about growth, but it does now question whether members were given the wrong or full advice about a number of things and in Interviewee 11’s mind whether this was accidental or deliberate. Obviously, there have been a lot of comments about the 2020/21 budget, not just because of the comments in the RIPI, but also given the scale of variances in 2020/21. Interviewee 11 thought it is important to put on record that this was an iterative collaborative approach. Interviewee 11 then provided the following documents:

- slides for November 2019 Political Cabinet/ ELT ‘away-day’
- email in preparation for 6 January 2020 Political Cabinet discussion
- email in preparation for 20 January 2020 Political Cabinet/ ELT ‘away-day’

8.10.2 Interviewee 11 told me that these documents illustrate that other Cabinet members were being kept apprised of the risks and issues facing the Council. Interviewee 11 said that it is also worth noting that the Council’s budget is an area where members are very dependent on the input and advice from officers. ELT had participated in the late January 2020 away-day and (current) Executive Directors had contributed about their own budgets. Interviewee 11 said in that context, it is worth quoting two parts of the (current) Section 151 Officer’s formal advice in the Budget report to Cabinet and Council:

*Budget and budget process*

*14.13 Despite budgets being calculated on most likely estimates, not the best estimates basis, the budget contains significant challenges in terms of efficiencies delivery as well as demand led pressures and income generation. The Council has set plans to deliver departmental efficiencies and additional income of £40m. Whilst the financial environment remains volatile I believe that the budget and plans in place to review and monitor spend throughout the year ahead take account of that environment and is therefore prudent for the 2020/21 financial period.*

*Reserves*

*14.9 The level of reserves and balances are principally the responsibility of the S151 officer and are key to ensure the financial sustainability of the Council. The Members of the Council are not automatically obliged to accept my advice in every particular, but must pay due regard to it and be satisfied that they have met their own public obligations if they are minded to depart from my advice.*

*14.10 In the context of the current financial climate and the financial risks which the Council faces my formal advice to all Member is that an appropriate level of General Fund Balances is between 3% and 5% for the medium term which in cash terms is between £8m and £13.8m. The current level of General Fund Balances is £10.4m. This budget makes provision to increase reserves by £5m.*

8.10.3 Interviewee 11 said that it is worth reflecting on another example of where politicians were sidelined and pushed out. Interviewee 11 had proposed that there should be meetings (monthly for the Children’s and Health, Wellbeing & Adults, bi-monthly for Place and Resources) co- chaired by

the (current) S151 Officer and Interviewee 11 and attended by the relevant Executive Director where they would review not just management accounts, but cost drivers/lead indicators and, critically in particular at the start of the year, actions to deliver budget initiatives. The idea was also that Interviewee 11 and the (current) S151 Officer would report back to political Cabinet (and the (current) S151 Officer to ELT) on what was emerging. However, this had been blocked by the (former) Chief Executive and no ELT accountability process in Interviewee 11's opinion was put in place by the (current) S151 Officer.

8.10.4 Interviewee 11 subsequently made a number of other observations to me about the financial management arrangements at Croydon:

- Budget accountability

Officers of the Council did not appear to consider it their responsibility to deliver their budgets, regarding this as a Finance issue. This was particularly true in the demand-led areas such as social care. It is telling that the first recommendation in the Report in the Public Interest references this. And where there were issues recognised, there was no sense of urgency or pace.

- Financial control environment

It is now clear to Interviewee 11 that there are very serious weaknesses in the financial control environment. The fact that these were allowed to occur and nothing done about them in their opinion is really concerning. The (current) S151 Officer did not flag those issues or make an issue of them when considering pressure to make budget savings in her area. This put the Council in peril.

The huge year-end variances in 19/20 (gross £17 million in March 2020 just in Children's, for example) shows how out of control the budgets were. Interviewee 11 had been making an issue of how placements were decided, monitored and paid, for a year or two, as it was clear that there was very poor practice which meant that the Council did not know its run-rate at any time and did not have accurate financial forecasts and even outturn. The fact that this was not seen as a priority by the (current) Section 151 Officer or other (current) senior officers of the Council is quite shocking.

- Interviewee 11 met with the external auditors in late 2019. The only issue raised by the auditors, in a long and detailed meeting, was the issue of the Council's level of reserves and, linked to that, the treatment of the Dedicated Schools Grant. None of the other issues raised in the Report in the Public Interest were raised in that meeting. The auditors did not take any opportunity to raise their other concerns with Interviewee 11 then or subsequently and, Interviewee 11 understands, they did not raise any issues of serious concern with the Chair of the General Purposes and Audit Committee when they met with her in early 2020. The information from officers was that the auditors had some concerns and had sent the (former) Chief Executive a letter, but that these issues were being addressed to the satisfaction of the auditors. This remained the information that was being given until September 2020 when members were suddenly informed that there was serious consideration being given by the external auditors to a Report in the Public Interest.

8.11 Interviewee 19 (a former and/or current member of the Cabinet or Committee Chair) told me that the budget-setting process that has been used for the 2020/21 budget was not satisfactory. In the past there would be discussions and budget papers produced in November/December so that the

Scrutiny Committee had time to play its part in the process, but this time the budget papers went to Cabinet in February 2020, just days before the Scrutiny Committee meeting which gave little time to prepare. Croydon had managed to live with low General Fund reserves for nearly three decades, which meant that the actual level of reserves was never really discussed, nor the risk associated with low reserves, in any Council meeting between 2010 and 2018. None of the three S151 Officers (current or previous) made any special issue of the level of General Fund reserves until 2019. There is now an (Interim) Chief Executive and a new Leader who both have very different styles from their predecessors. Interviewee 19 said that the (former) Leader discouraged and disliked any questioning of the major decisions that he and his Cabinet members were undertaking, and had disposed of a talented Cabinet member in 2016 because she had challenged him and had asked the right questions. Interviewee 19 said that there has been a weakness in the organisation for many years, probably since the early 2000s, where people have not been prepared to take difficult decisions and to say no to anything. Successive Chief Executives have come in pledging to change this culture but this has never happened – hence the extensive staff cynicism about whether anything will ever change. Interviewee 19 said that the (former) Chief Executive had some really good ideas about how to improve things and initially there was political support for the changes she wanted to introduce, but the financial problems overrode the willingness to change and then COVID broke the back of an organisation with no financial reserves. It is too easy for members to now blame officers for the situation that Croydon is in but the reality is that previous Cabinet members were not prepared to make the difficult decisions to cut spending which was what has really been required for many years.

- 8.12 Interviewee 14 (a former and/or member of the current Cabinet or Committee Chair) told me that there has been an organisational culture that was not committed to performance management and to financial accountability. So far as finance was concerned it was always left to the (former) Cabinet member for Finance and Resources as the person to sort out any financial problems and no question of affordability was ever raised. When questions were asked by external auditors these were always fended off. On reflection, Interviewee 14 really does not understand why the officers did not flag up the risk and the un-affordability of the things that elected members were intent on doing. Interviewee 14 now appreciates, having read the RIPI that members paid insufficient attention to managing resources and did not get the balance right in also lobbying government to give the Council more money. Interviewee 14 said that what they should have done was manage the budget much better over the years, build reserves and not do all the ‘shiny new things’ without making sure they were affordable. There was no corporate or coherent approach taken to manage the Council’s financial situation responsibly and members should have looked more critically at whether to take the hard decisions like discontinuing or reducing support for activities such as supporting UASC if the administration wanted to set up companies and buy hotels.
- 8.13 Interviewee 16 (a former and/or current member of the Cabinet or Committee Chair) told me that of course it was widely known that the Council had been ‘underfunded’ relative to its comparative needs by the government for many years and that it faced additional costs because of the asylum seekers in the Borough. But Labour councillors had been very reluctant to cut services like Children's Services and Adult Social Care or to reduce commitment to UASC. But in the end, everyone has to accept that they have to live within their means and other Labour Councils in London seem to have been able to manage this. Interviewee 14 sees now that the Council should have cut its costs much sooner so that it could live within its means.
- 8.14 Interviewee 24 (a former and/or current member of the Cabinet or Committee Chair) told me that part of the explanation of Croydon’s current difficulties has to be in the context of continued underfunding by government, the impact of austerity, the impact of COVID and specific issues such as UASC. Interviewee 24 said that this was compounded by the political marginality of Croydon that makes it so difficult for members to take bold political decisions that impact detrimentally on Croydon residents. The Council has had reducing and limited resources when

there has been a huge and growing demand for social care. Interviewee 24 said that the approach had not been to ‘cut its cloth’ but to try to ‘stretch the cloth without cutting it. This had worked for quite a long time, but then the impact of COVID in Croydon that was badly hit this year had tipped the Council’s finances over the edge. Had it not been for COVID the Council may have been able to survive for another year but now there is no choice but to face the music.

8.15.1 Interviewee 41 (a former and/or current member of the Cabinet or Committee Chair) had been aware for nearly 30 years as a member of the Council that Croydon had never been free of financial problems thanks to the continuous underfunding by which it is treated as an outer London Borough so that Lambeth for example, its neighbour, as an inner London authority gets twice the per capita funding that Croydon does, when Croydon faces many of the same challenges of deprivation and poverty. Consequently, the Council has needed to continually make cuts in spending which is always a challenge in an authority which changes control from time to time. Interviewee 41 said that in 2010, when austerity was imposed which affected all local authorities, Croydon had further particular localised problems. Croydon also has the Home Office Asylum Centre in Croydon so it has been host to more asylum seekers than any other London Borough. Interviewee 41 had found it frustrating that other Directorates consistently overspent as Interviewee 41’s portfolio had always balanced its budget, and had given back significant savings - £3m per year - to help the corporate overspend. So whatever happened, whatever national government was in place, the Council always had financial challenges.

8.15.2 The pandemic in 2020, plus the underfunding of UASC, tipped Croydon over the edge. Interviewee 41 had not been directly involved in the investment initiatives and understands the current problems with these but is confident that at some point the Council will see its loans repaid and the investments producing income streams. Interviewee 41 said that it is disquieting on reflection that these initiatives were in their opinion, not really properly discussed at Leadership Team meetings that the (former) Chief Executive and the (current) Finance Director attended or at political Cabinet, where there was no ongoing discussion or agenda items about Brick By Brick or the Croydon Park Hotel. Having said that, whenever questions were asked, including at Scrutiny Committee and General Purposes and Audit Committee, feasible answers had been given. These initiatives were very much led by the (former) Cabinet Member for Finance and Resources, the (former) Deputy Leader (re housing initiatives) and the (former) Leader. Interviewee 41 supposed that under ‘old school’ governance arrangements the (current) Director of Finance and the (current) Monitoring Officer would have had a stronger role to play in advising on these investments. Interviewee 41 feels those Statutory Officers should have spoken up if they had doubts, although no one knew there was going to be a global pandemic. The Grant Thornton letter to the (former) Chief Executive in April 2020 was sprung on Interviewee 41 who did not know about it until much later. Interviewee 41 believes that the (former) Leader and the (former) Cabinet member for Finance and Resources were not told straight away about the letter but were aware of it later. It was never discussed at those Leadership Team meetings with the (former) Chief Executive and it should have been. Interviewee 41 is very disappointed that there had to be a Public Interest Report and everything else that the Council is now facing, but is not entirely surprised. It has been known for many years that the Council faced serious financial problems with consistent overspending and low reserves, and in 2014 the (former) S151 Officer presented members with the LGA ‘Graph of Doom’ that showed that by 2026 all local authorities would be unable to balance their books but in Croydon’s case it would be 2022. So the Council is now a bit in advance of what the (former) S151 Officer was telling members then.

8.15.3 The election manifesto in 2014 was very ambitious despite the ‘Graph of Doom’ forecast and the new administration had been pleased that officers were committed to delivering as many of the manifesto commitments as possible. Interviewee 41 commented that with hindsight the manifesto was maybe too ambitious and maybe officers should have done more to caution members then about the feasibility of delivery and should have proposed prioritisation of initiatives that were

affordable. Officers should be encouraged and required to say no when that is the right thing to do and there is statutory protection to cover them if they do.

- 8.16.1 Interviewee 18 (a former and/or current member of the Cabinet or Committee Chair) told me that although there are particular difficulties with the Council's finances at the moment this has been a problem for many years and all the time since Interviewee 18 has been on the Council. Reserves have always been low and there never has been the right opportunity to build them up to an acceptable level. It has also been very difficult to meet the level of demand for demand-led services like Children's Services and Adult Social Care so those Directorates have been overspending for many years, and this was exacerbated by the need to improve services following the adverse Ofsted judgement in 2017. The Council is funded as an outer London Borough but the reality is that it is not typical of those Boroughs and there are severe inner city problems in parts of the Borough. More than half of Croydon is typical inner city with more and more people being forced out of London because of the cost of housing and ending up here bringing with them their housing and other problems. This has accelerated housing need in Croydon and this has been a big issue for Interviewee 18 and other members of the Labour Group who were very ambitious that the Council should provide many more affordable homes and were keen to find a mechanism to do this when Labour took control in 2014.
- 8.16.2 Interviewee 18 said that having a wholly-owned but 'arms length' Development Company like Brick By Brick was seen to be the right mechanism to deliver lots of affordable homes. The (former) Cabinet member for Finance and Resources was always regarded as a very competent and knowledgeable Finance Lead - he was an accountant - and he had worked closely with the (former and current) S151 Officers in managing the Council's finances. The Cabinet was continually being assured that the known financial problems were manageable and the other Cabinet members felt it was ok to focus on delivery of their own portfolios. Interviewee 18 was very disappointed when it became clear that the Council had such serious financial problems that it would require a S114 Notice following the publication of the RIPI, and Interviewee 18 certainly had not understood just how serious the problems were. There is no doubt that the pandemic pushed the Council over the edge because in February 2020, before the pandemic really took hold, the Council was finalising a budget for 2020/21 that was said to be addressing the overspending as well as building back reserves. This was the first time that Interviewee 18 had heard that the appropriate level of reserves was £50m, and although Interviewee 18 had known for many years that the Council's reserves were low it seemed to be an unachievable task to build them up to that level over a reasonable timescale and whilst maintaining an appropriate level of services. Interviewee 18 does not recall officers or the external auditors previously advising that this was the level of reserves the Council ought to maintain. Interviewee 18 said that a significant problem that has come to light is the Council's lack of robust internal financial management. The Council's capacity in this critically important area appears to have been fatally undermined through the cuts to 'back of house' services over the last decade or so that were necessary to protect frontline services from the very significant austerity cuts to Council funding made by central government.
- 8.17.1 Interviewee 20 (a member of the Opposition Group) said that the Council had been reluctant to take the necessary action to sort out its finances for a number of reasons but mainly because any reductions in what it did would be unpopular in the community. So, overspending was not being effectively dealt with but attempts were made to compensate for the overspending by cutting corporate items, so there were short term fixes rather than structural solutions. Commercial initiatives designed to increase income were undertaken rather than dealing with the inherent problems with the budget.
- 8.17.2 The (Interim) Chief Executive is now having to deal with this very late in the day and the £110 million 'growth' in next year's budget is not really growth at all but is just getting the revenue budget where it should be. Interviewee 20 said that the use that has been made of capital receipts

for 'transformation' funding to cover up departmental overspending follows the precedent at Northamptonshire County Council and Interviewee 20 has serious doubts that this was in line with government guidance on the use of capital receipts. So the strategy of using capital receipts and potential income from commercial ventures instead of dealing with inherent overspending by Directorates has, in Interviewee 20's opinion, been a massive failure and has exacerbated the current situation. One particular circumstance that Interviewee 20 wanted to draw attention to is the change in the Council's financial position between Q2 and Q3 for 2019/20. This was something Interviewee 20 had raised at the February 2020 Cabinet meeting and had asked questions about. The in-year overspend position was very bad at Q2 and improved significantly by Q3. This appeared to be because large amounts of money in the affected departments were now showing as 'transformation'. These were not there at Q2. Transformation spending that is introduced in year should not affect budget performance, it should be an additional cost that produces future savings. Interviewee 20 felt at the time - and still feels - that pressure may have been applied to officers to 'move' costs into 'transformation' to improve the performance versus budget position that would clearly have been wrong. Interviewee 20 believes that this pressure would have come from the political/officer leadership, and is firmly of the belief that this use of transformation funding would breach government guidelines.

- 8.18 Interviewee 4 (a member of the Opposition Group) said that poor control of budgets has been at the root of Croydon's problems over many years, exemplified by the regular overspending in Children's Services even allowing for the fact that it and Adult Services are both demand-led. Interviewee 4 had been upset at the statement in the RIPI that both political parties are responsible for the situation as the Opposition at Croydon does not have any real influence on decision-making. It is correct that the Opposition has supported the current Administration's budgets as there was not really anything wrong with the budgets that have been agreed as they have arguably been the best available disposition of the resources available. Interviewee 4 said that the problem has been with the delivery and control of those budgets by Directorates and their Cabinet leads.
- 8.19 Interviewee 21 (a member of the Executive Leadership Team) said that when starting with the Council it was thought that the Council had no financial problems and that there was a lot of money for investment and so on. It was only after the (former) S151 Officer left that the problems with Croydon's finances became known about more generally, and in recent times the focus for the Council has been on budgets and the need to sort out the serious financial issues.
- 8.20 Interviewee 29 (a member of the Executive Leadership Team) said that the budget-setting process at Interviewee 29's previous authority had been really important, stretched over maybe six months or more starting in the late autumn each year. In Croydon the process has seemed to be more of a short term 'tick box' exercise and not a joined-up process subject to corporate discussion. Interviewee 29 recalled working with the (current) S151 Officer and the Director of Policy and Partnerships on a presentation about the financial challenges for a CLT meeting in June 2019. The (former) Chief Executive had not been happy with aspects of the presentation and had changed some slides so that the presentation was more positive. The (former) Chief Executive did highlight the issues but always liked to go out on a high, so she had ended with a positive message that they could fix things. At the end of the financial year she said - 'we've done it' - but Interviewee 29 said of course they had not and it was all still to do. When COVID hit earlier this year the (former) Chief Executive did react and focus on the Council's financial problems and set up the Finance Review Panel and appointed a Finance Consultant. It seems to Interviewee 29 that Croydon has always focused on the 'shiny' things and not on basic stuff like financial management. Interviewee 29 said that there is no standard approach to financial accounting at Croydon and Directorate accountants each have a different approach to budget setting and control. Some managers in Croydon tend to leave financial matters to their accountants and there has been no training or consistent approach to managers being responsible for budget control in Interviewee 29's opinion, so it is not surprising that there is unclear financial accountability. Not all managers have the

necessary skills or understanding to monitor their budgets on a monthly basis, and the consequences of some proposals do not seem to be assessed before they are introduced and implemented. Interviewee 29 gave the example of the (former) Cabinet member for Finance and Resources wanting to ‘insource’ everything, a defensible policy in principle and also a manifesto commitment in 2018. The headcount went up by 900 in the last three years and it had cost the Council more to run the same services with no compensatory savings, adding to the Council’s budget problems. Interviewee 29 said in their view that there seems to be an absence of risk assessment and necessary checks and balances to ensure that good ideas are affordable.

8.21 Interviewee 25 (a member of the Executive Leadership Team) was aware that Grant Thornton had sent a letter dated 22 April 2020 to the (former) Chief Executive because Interviewee 25 had been at the meeting with Grant Thornton when it had been discussed. Interviewee 25 had been copied in with the letter by the (former) Chief Executive in an email request to the (current) S151 Officer, asking Interviewee 25 to support the management of the response. ELT were sent the letter by the (current) S151 Officer in May 2020 and the (former) Leader and the (former) Cabinet member for Finance and Resources were both aware of it at the time. The (former) Chief Executive was working on a planned response to the letter and the concerns expressed in it, such as working with CIPFA on a sector response to COVID expenses and external support to Croydon through the establishment of the Finance Review Panel, attended by Grant Thornton. The letter and the concerns in it were also discussed at every Finance Review Panel meeting, starting on 21 May 2020. The need for a response also formed part of the Panel’s Terms of Reference. Interviewee 25 told me that consideration had been given to whether a S5 Report was required but Interviewee 25’s conclusion had been that any issues were around the Council’s finances and not about lawfulness. The Annual Financial Reports were all properly signed off by the (current) S151 Officer and there was no unlawfulness that was indicated so the conclusion of Interviewee 25 had been that no formal intervention by the (current) Monitoring Officer was necessary. Interviewee 25 said that the (current) S151 Officer had consulted about the decision to issue a S114 Notice and Interviewee 25’s personal opinion was that it was the right thing to do. Interviewee 25 is of the view that there had been no unlawfulness in respect of the way the Council set up the various companies. External legal advice had been sought about setting them up including the LLPs and it had been established that the Council had the vires to set them up.

8.22 Interviewee 31 (a member of staff) told me that there had been overspending on the ‘Communities’ budget, and some solutions to the overspending had been proposed by Interviewee 31 to manage and take personal responsibility for those budgets including a cutback in voluntary sector funding. Understandably, this was not a popular option and the then Cabinet member responsible was very uncomfortable with it. That Cabinet member had complained to the (former) Cabinet member for Finance and Resources who said that it need not be done, and the (former) Cabinet member for Finance and Resources then spoke to the (current) S151 Officer to say it was not a problem, and it then got ‘fixed’ by being charged to the Collection Fund instead. Interviewee 31 told me that colleagues had told Interviewee 31 that this was a typical example of the way the (former) Cabinet member for Finance and Resources operated.

8.23.1 Interviewee 37 (a member of staff) on starting at Croydon in February 2016 had requested a budget line for a budget for which they were responsible. Two people in the Finance Department had been dealing with the request but they really could not give any sound information. At that time Interviewee 37 had been in the prior Chief Executive’s Department and given previous experience in many organisations at local, regional and national level it had seemed to Interviewee 37 that Croydon’s finances were in total chaos with the usual local authority arrangements and the checks and balances that had been a matter of course elsewhere were simply not in place. What became clear when Interviewee 37 probed a bit was that the so- called budget they were meant to be in control of was being used to fill ‘holes’ in other parts of the Council’s budget, and Interviewee 37 was soon struck by how little some Executive Directors and other Directors understood the details

of their budgets and how to manage and control expenditure. There was no consistency of approach, no transparency and the budget was being used for other purposes. Interviewee 37 had asked for someone from Finance to help with understanding where the various budget elements were but no one could. Indeed, one of the people who was meant to be managing the budget clearly did not have a full grip of budgetary or financial issues, and Interviewee 37 said to the (former) Executive Director of Resources and S151 Officer that, if there was not a different Finance lead provided, Interviewee 37 would identify this on the Corporate Risk Register. Interviewee 37 was then allocated someone in Finance who was, and still is, excellent, and has been a key part of Interviewee 37 being able to fully identify where the budget was. This took about 18 months and in the meantime Interviewee 37 developed a 3-year budget which was good practice. However the monies for the budget that Interviewee 37 had identified were then used to offset the Adult Social Care overspend. Even now £1m of the budget is in the One Croydon fund and £300,000 per year goes to a general commitment for 3 years made before Interviewee 37 arrived at Croydon.

8.23.2 At one point Interviewee 37 was funding pretty much the whole of the Environmental Health Department through a budget which is explicitly not to be used for mandated services. Interviewee 37 had been distressed that for the first time in a nearly 40 year local government and NHS career Interviewee 37 could not say where the budget was so it could not be managed or controlled. No one seemed particularly perturbed about this as it appeared to be the normal Croydon way of doing things.

8.23.3 Interviewee 37 had raised this with the (former) S151 Officer who was sympathetic and said that he would sort it out but nothing changed. It got to the point that at one time Interviewee 37 was funding 45 posts across the Council. Interviewee 37's personal opinion is that there is a lack of professional budgetary competence in Croydon which is exaggerated by the silos Directorates work in. There seems to be little sense of or commitment to corporate working, and although the narrative is there sadly the practice rarely is. It seems to be in Croydon's DNA that there is no need for budget management or control. The first week that Interviewee 37 started at Croydon the (former) Cabinet member for Finance and Resources had asked to meet and had then quizzed Interviewee 37 about budgets, and from then on he was consistently interfering with budgets using them to fund his pet projects. This was happening on the (previous) S151 Officer's watch and the (former) Chief Executive was aware of the behaviour of the (former) Cabinet member for Finance and which was being used with other budgets but no one said anything. Interviewee 37 said in their opinion that it seems that not just him but that other members as well do not understand or respect sufficiently the boundaries between the roles of officers and those of members. It is no wonder in Interviewee 37's view that officers in Croydon do not seem to have a basic understanding or commitment to basic budget management and control that is the norm elsewhere because why bother? Interviewee 37 said that it is no wonder that Croydon has always had a reputation of being poor in financial management, and it seems that the Council has for long been known for overspending and for its low reserves.

8.24.1 Interviewee 43 (external to the Council) said that in their opinion there has been for a long time a big question about the adequacy and quality of leadership in the Council's financial management. Whilst Interviewee 43 does have a great deal of respect for the (current) S151 Officer, her financial expertise and her resilience, they are of the opinion that she does not have the necessary experience or expertise to be able to do what is required in this extreme situation. Indeed, many much more experienced Finance Directors would struggle to deal with it. She has no previous experience of being a S151 Officer and she has worked for Croydon for most of her career. Interviewee 43 questioned why it was thought appropriate to appoint someone with that sort of experience and expertise to be the S151 Officer given the emerging understanding at that time of the seriousness of the financial plight the Council was in. Interviewee 43 asked whether it had been considered 'convenient' to appoint someone who could possibly be manipulated into not raising issues and concerns that the Council's political leadership did not want raised. Whatever the reasons were,

the result in Interviewee 43's view is a serious deficit in the Council's financial management, and challenging or saying no to the Council's political leadership just has not happened to the degree required.

- 8.24.2 Interviewee 43 believes that the (current) S151 Officer may have been 'leaned on' by the (former) Chief Executive and the political Leadership not to issue a S114 Notice earlier this year. Interviewee 43 understood that the (current) S151 Officer had decided this was necessary but over the weekend, it is understood by Interviewee 43 that she was 'worked on' by the (former) Chief Executive and (former) Cabinet Members and then decided not to issue the Notice. The problem in Interviewee 43's opinion was exacerbated by the reporting arrangements as the (current) S151 Officer reports to the (current) Executive Director of Resources and Monitoring Officer who is not a qualified accountant. Interviewee 43 will be recommending to the (Interim) Chief Executive that the S151 Officer post should report direct to the Chief Executive and should sit at the top table along with Executive Directors.
- 8.25 Interviewee 50 (a member of staff) said that there had been a huge loss of trust amongst trade union members as a result of the disastrous financial situation and its consequences for both staff and the wider community. What is now needed above all is openness and transparency about how the Council got here. Interviewee 50 said that there is also a need for more accountability for the situation for both senior officers and elected members. Elected members do not seem to have understood sufficiently the direction they were taking with some of their decisions about the Council's finances, and they need more and better training to ensure that they understand what they are doing. The Council's Finance Directorate needs to be reviewed and there needs to be more checks and balances in place to ensure that there is never any repetition of what has happened. There is a lack of robust financial control in place, and things are not properly checked or challenged. The cut in Finance staff has contributed to the poor control of expenditure.
- 8.26.1 Interviewee 51 (external to the Council) told me that it was clear on arrival in Croydon that there were financial problems facing the Council, with claims that it was significantly underfunded and that reserves were consequentially low. The (former) Chief Executive had always been very open with Interviewee 51 about this and about just how difficult the situation was becoming particularly when COVID seriously exacerbated the situation. But her approach was always that we know there are difficulties but we will be able to find a way to get through this and manage the situation.
- 8.26.2 Interviewee 51's view is that essentially the Council had not accepted the scale of the financial problems that were mounting up, and that there has long been a problem with ownership and honest acceptance of the situation the Council was facing. There may even have been an element of not fully and clearly setting out the scale of the issue both to the outside world and to them. As part of that, the underfunding and impact of COVID were signalled as the key drivers to the financial problems and the COVID issues would be the case for every London Borough, although no other Boroughs are in anything like the serious situation at Croydon. There is no doubt that COVID exacerbated the Council's financial problems but it clearly goes much deeper than that and the problems have much longer roots.
- 8.26.3 It seems to Interviewee 51 that there is some rewriting of history taking place, with members saying that officers did not tell them how bad things were and officers saying that members would not let them do what had to be done. There seems to still be a question of how honest some people in Croydon have been prepared to be about the causes of its current problems. It does appear that the most senior managers at the Council are being blamed for what has happened but Interviewee 51 is clear that others had a part to play. One of the problems with Croydon is that it is never 100% clear who is responsible for what, and there is quite a complicated management structure. It also seems to Interviewee 51 to have been a false move not to replace an experienced S151 Officer who left with an equally experienced S151 Officer. This was rather unfair on the (current) S151 Officer

as she has been pitched into a situation that she did not have the necessary experience to deal with – but then she did accept the role. Interviewee 51 is of the view that until the Council’s Executive Leadership Team really gets its act together to support the (new) Leader and the (Interim) Chief Executive, the Council will struggle to deliver the Improvement Plan.

- 8.27.1 Interviewee 52 (external to the Council) - said that on arrival at Croydon, the public sector organisation that they worked for in Croydon had been in deficit and it continued to be in deficit for the first five years of Interviewee 52’s time, with the last two years being in balance. So it seems to Interviewee 52 that being in deficit in the public sector has been very much the pattern in Croydon and that has been the financial situation that they have all had to manage. Although it was not highly visible as an issue, Interviewee 52 was aware that the Council’s reserves were already low and that they continued to reduce year on year. Interviewee 52 was not directly involved in the Council’s budgeting process but since being at Croydon Interviewee 52 has always been concerned about the way the Council planned its budget for the following year. Interviewee 52 has read the reports to Cabinet and Council and it seemed that what was being presented to members always seemed to ignore or paint over the financial risks for the current year so that this did not impact on the strategy for the next year. So the focus was always on the next year and the reality of the current year was ignored. It has never seemed to Interviewee 52 that Adult Social Care has been a priority for the Council, focused as it has been on improving Children’s Services and on its investment in assets. The social care budget has been stable at around £100m for each of the last three years and this has ignored the developing situation with the increased need for and mounting costs of adult social care.
- 8.27.2 Interviewee 52 was surprised to read the Report in the Public Interest as Interviewee 52 had not realised just how serious the Council’s financial situation was and how defective the governance arrangements were. It seems that the finance function has a much greater role and influence in their public sector organisation than it does in local government, in Croydon at least. It appears to Interviewee 52 that the Finance Team at the Council were essentially ‘bean counters’, and with all responsibility being held by budget holders. At least Croydon now has to confront and deal with reality. Before the RIPI the Council tended to blame external factors for its financial problems - UASC, the Home Office, austerity, COVID, NHS etc. The action plan recently approved by the Council should address the real issues but it will take a lot of time and a huge organisational effort. Interviewee 52 had been surprised when the (former) S151 Officer left the Council, not least because the replacement arrangements were not appropriate with in Interviewee 52’s opinion an inexperienced S151 Officer being appointed who was not even an Executive Director.
- 8.27.3 Interviewee 52 does have specific concerns about the way the Council manages its budget setting process. In the current year’s budget the ‘Older Adult Social Care’ growth was funded by assuming a £6m contribution from the NHS. This was an assumption by the Council rather than a negotiated position, and Interviewee 52 has learned that it had not even been discussed with the NHS before it was shown in the budget papers. It led Interviewee 52 to look back over the provision for Adult Social Care in the budget papers for the previous three years, and it became clear that this pattern of setting very optimistic budgets based on similar assumptions was endemic. It also highlighted that whilst there had been funding for social care it was diverted away from Adult Social Care. So there is a serious problem with the way things have been presented by the Council, and transparency and reality have been a problem over recent years. Interviewee 52 has always found it very difficult to know precisely what joint funding has been allocated to the Council (e.g. BCF, social care grant) and how it was being deployed. A common narrative was that funding was provided and then taken away as ‘efficiency’. Presentation of numbers has tended to be optimistic, for example, even in the 2020/21 financial recovery plan, the Council estimated £20m - £25m savings, which included £12m of NHS cost reimbursement. This was straightforward inflation of savings numbers, with the true Council savings figure being nearer £10m. Interviewee 52 has been

encouraged recently that the (Interim) Chief Executive has changed the way such things are being reported.

- 8.28.1 Interviewee 9 (external to the Council) - has been involved with Croydon and its current financial situation for some time. London Borough have a programme of regular reviews of the work of Directors of Finance whereby they visit other authorities and feedback an assessment by way of a formal letter. Interviewee 9 did this in Croydon five years ago and was asked to repeat the exercise in 2019. What Interviewee 9 saw immediately in 2019 was a significant deterioration in the way Croydon's finances were being managed compared to five years previously. It is true that Croydon has always operated on the edge with its big ambitions and limited resources, but what Interviewee 9 found was much more serious than this.
- 8.28.2 The whole financial situation was riddled with risk, particularly around the companies that the Council had created like Brick By Brick, there were issues around capitalisation and unrealistic expectations about the extent of external funding. Combine all that with significant overspending by Children's Services and Adult Services and in Interviewee 9's opinion the Council was clearly in deep trouble. The 2019/20 budget had a forecast overspend of £20 million at that time and this was building on the significant overspends in previous years. So by the end of the summer of 2019 the situation was serious and deteriorating rapidly. Interviewee 9 was so concerned about what had been found through the review that Interviewee 9 had declined to sign off the traditional London Councils letter and had raised concerns with a senior London body – ELFAC.
- 8.28.3 Interviewee 9 paid a further visit to the (current) S151 Officer at Croydon to discuss the serious concerns and the (current) S151 Officer had been very clear in her recognition of all these issues and provided a confidential note setting out all the actions that she considered were necessary to address the situation. From memory, Interviewee 9 recalls that she was specific that the (former) Chief Executive was not financially 'literate' and that effectively the (former) Leader and the (former) Cabinet member for Finance and Resources had total control of the situation in which the (former) Chief Executive was essentially a compliant player delivering their instructions.
- 8.28.4 The (current) S151 Officer was new in her post and had been promoted internally with no real experience of other councils outside Croydon when her predecessor left very suddenly leaving a successor to sort out the mess. Not only was the (current) S151 Officer inexperienced and solely used to the unusual Croydon way of doing business where members are very much in charge, but unusually she also reported to the (current) Monitoring Officer which compromised her freedom to carry out her statutory responsibilities. The (current) Monitoring Officer herself was also understood by Interviewee 9 to be an internal appointment who was familiar only with Croydon's way of doing things so the potential for challenge based on knowledge and experience of best practice was very limited.
- 8.28.5 Interviewee 9 commented that it has been said that the (former) Chief Executive liked to appoint people to her team who would not challenge and get in her way so this inevitably meant that the (former) Chief Executive did not have a strong team of senior officers to support any challenge she might need to make about members' ambitions or actions. The outcome was that the (former) Chief Executive was compliant in her relationship with a group of ambitious politicians who did not have the financial resources to deliver their agenda without cutting corners, taking significant risks and borrowing recklessly – that is why the Council finds itself in the position as set out in the RIPI. The Council seemed to have not appropriately reacted in Interviewee 9's opinion to the concerns being raised by external audit about the Council's finances. The (former) Chief Executive was persuaded that setting up a Finance Review Panel would be the answer and the Review Panel had been sold to external audit as the only way forward in sorting out the Council's financial situation and the Panel was given more or less a blank sheet to do whatever seemed necessary. The Panel has specific Terms of Reference and has made some good progress in raising awareness of

the issues and developing solutions that are now incorporated in the Action Plan approved by the Council last week. The problem is that the Panel was given no real resource to carry out its work.

- 8.28.6 Interviewee 9 said that it became clear to the Panel from the outset of the Panel's work that the Council's financial resources were totally 'shot' and that there was likely to be an adverse outturn report for 2019/20 with limited processes in place for budget development and budget setting going forward. In Interviewee 9's opinion the Financial Consultant has proved to be a tremendous support to the (current) S151 Officer including producing a report that assessed the Council's financial arrangements against CIPFA standards and which resulted in 75 recommendations for improvement. And he has only just started his work. The (former) Chief Executive's line was always that it was all going to be ok and she and the (former) Leader appeared to be working together in the same way. The (former) Cabinet Member for Finance and Resources was becoming more and more influential. Interviewee 9 was aware that there was talk of the need for the Council to speak to MHCLG about a possible 'bail out' and the prospect of a S114 Notice became apparent. However, in Interviewee 9's opinion, the political Leadership pushed back on the proposal to issue a S114 Notice and pressured the (current) S115 Officer not to issue it. Then both the (former) Leader and the (former) Cabinet Member for Finance and Resources were replaced, the (former) Chief Executive departed and the current leadership arrangements were put in place with an Interim Chief Executive. The RIPI was published, the first S114 Notice was issued and the Council's action plan in response to the RIPI has been approved. The Finance Review Panel is still seen as a crucial element in delivering the Council's recovery in the longer term for as long as is required. It may be that the Interim Chief Executive decides that the work of the Panel should be subsumed in the proposed Improvement Board which in the opinion of Interviewee 9 would make sense.
- 8.29 Interviewee 39 (external to the Council) said that when COVID struck in March this year the London Chief Executives got together to agree regional roles and the lead finance role was given to Interviewee 39. This was a particular issue for Croydon. It had a large savings target and it was clear that COVID would only exacerbate the financial problems for Croydon. The (former) Chief Executive was worried about the situation and would contact Interviewee 39 regularly to ask what Interviewee 39 thought and how bad it really was, and Interviewee 39 had always been clear with the (former) Chief Executive that the situation was very bad and that Interviewee 39 was very worried about the situation. However, the (former) Chief Executive was convinced that she could 'drive' Croydon out of the problem and was very committed to doing so as she clearly did not want to be seen as the Chief Executive who had left a mess. She then set up the Finance Review Panel and asked Interviewee 39 to be a member. At that time Croydon was preparing its 2019/20 outturn report and the (former) Chief Executive said to Interviewee 39 that it was all ok, that everything had been sorted out despite previous high overspends being forecast. Interviewee 39 and the Chair of the Finance Review Panel tried to get to the bottom of how this had been achieved because it did not seem feasible from what they knew. It turned out that the numbers had been significantly dampened down and netted off, masking the seriousness of the situation, and the (current) S151 Officer's report to Cabinet on the outturn was revised to be acceptable and in Interviewee 39's opinion it did not tell the real story. Interviewee 39 said the fact is that in their opinion the (former) Chief Executive was not competent to deal with what was facing her, and neither was her ELT or the (former) Cabinet members. Despite the fact that the (former) Chief Executive had set up the Finance Review Panel, in practice it was clear to Interviewee 39 she had not liked the Panel's challenges, particularly when she was not aware of this prior to the meeting of the Panel and she would sometimes get agitated as a result.
- 8.30 The Rapid Review Team Report summarised its findings about financial management in Croydon as follows:

*'The financial pressures and problems encountered by LB Croydon are well documented and have now been acknowledged and owned by the Council. It is not uncommon for local authorities to feel the financial pressure of demand on Children and Adult Social Care budgets, but in Croydon these pressures appear to have been poorly managed. Additionally, many local authorities have felt the added burden on services brought about by the COVID 19 health crisis, but few have crumbled financially in the way that Croydon has. Grant Thornton reported in the Public Interest Report that Croydon's "fragile financial position – (was not caused but) – exposed by the impact of COVID-19".*

*Croydon adheres to the CIPFA Financial Management Code in seeking to strategically manage its finances through a Medium-Term Financial strategy. In setting annual budgets it has sought to manage and respond to pressures, by budgeting for growth and seeking to make efficiencies where possible. Many officers and Council members told us that the Council's track record in managing to budget or achieving savings is very poor. This is evidenced by recurrent and substantial overspends, particularly with social care budgets.*

*Like other Councils, Croydon has turned to more commercial income generation to assist in bridging the gap between expenditure and income. Some of these investments (e.g. The Colonnades shopping centre) have been positive and generated a steady return. But others, like the Croydon Park Hotel and its flagship Housing Company, Brick by Brick have not delivered to expectations. That said, it is our view that the Council has managed some of these initiatives (most particularly Brick by Brick) extremely poorly. All Councils encounter unforeseen spending pressures and in anticipation of this, they will prudently accumulate reserves. Croydon has historically maintained a very low level of reserves and so has had little to help it resist the financial crisis it is currently experiencing.*

*In its medium term financial planning Croydon Council appears to have laid great store on its Incremental Financing Scheme through the Croydon growth zone, which anticipated a substantial growth in Business Rates income, the centrepiece of which was to have been a new Westfield Shopping Centre. Changes in economic circumstances have meant that much of the new development is stalled, including the Westfield development. It is clear that in recent history Croydon Council has failed to manage its finances adequately in many of these areas. It is a Council that is said to be unfamiliar with taking and implementing difficult financial decisions and as a consequence it has engendered a culture of poor budget management and poor financial control.*

*There seems to be a unanimity of view that these failings are attributable to the poor Leadership and poor management of the Council over a number of years. It is said that the strong Leader and Cabinet model allowed the former Leader to create an inner circle of a small number of Cabinet members, who have been very controlling in their management of the Council and its finances. There was a clear desire to pursue an ambitious growth agenda for Croydon and when elements of this growth could not be realised, rather than increased caution, it seems there was a continued desire to accentuate the positive. We heard many accounts of officers being asked to re-word Cabinet reports to present the most favourable picture. It is evident that the tone of many financial reports to Cabinet do not accurately reflect the seriousness of the Council's financial position. Many Council officers and members from both sides of the Chamber have stated their shock at the revelations of the Grant Thornton Public Interest Report.*

*There are a number of checks and balances in the management of Councils to guard against serious breaches in Governance and/or good financial management. Executive Officers carry statutory responsibilities; the Council has a Scrutiny function as part of its Governance; it has a General Purpose and Audit Committee; and external auditors form a key part of the financial assurance framework. These checks and balances appear not to have worked. The statutory officers did not assert their powers. It is only in the last few weeks that the Council's Finance Director issued a section 114 notice on the Council, freezing all new expenditure as the gap in this year's budget continues to widen. Arguably this notice should have arrived earlier. The Scrutiny Committee, whilst calling decisions in were not forceful in their challenge and did not refer key decisions back for the consideration of full Council. The Audit Committee appears to have been similarly unchallenging. Finally, the external auditors whilst raising concerns over a number of years arguably could have been more forceful in escalating their concerns. That said, Grant Thornton's Report in the Public Interest has finally brought matters to a head.'*

## Scrutiny and Overview

- 9.1 Croydon Council is required by law to have arrangements for scrutiny and overview as part of its Executive arrangements. In theory, and as described in the Council's Constitution the arrangements are robust and important. Those elected members and officers interviewed however paint a rather different picture.
- 9.2 The Council has one overarching Scrutiny and Overview Committee encompassing all the scrutiny functions required by Statute. Seats are allocated according to the rules of proportionality, which provide for the allocation of seats on committees so that they continue to reflect the overall political composition of the Council.
- 9.3 The purpose of Scrutiny and Overview is described in the Constitution as follows:

*'The Scrutiny and Overview Committee ensures the efficient and effective conduct of its responsibilities through the work of a number of Sub-Committees, and 'task and finish' groups.*

*The Scrutiny and Overview Committee and its Sub-Committees hold the Executive to account, monitor the performance of Council services and investigate matters affecting the wellbeing of Croydon. In addition the Scrutiny and Overview function has a statutory duty to scrutinise Health Services, Community Safety issues and education matters. They carry out these roles in a number of ways including:*

- *Reviews of services which often cut across organisational boundaries and roles*
- *The scrutiny of Action Plans and Implementation*
- *In certain circumstances and in accordance with the Scrutiny and Overview Procedure Rules at Part 4 of the Constitution, Members may request the review of an Executive key decision taken by the Cabinet or a Cabinet Member but not yet implemented*
- *Any Councillor except a Cabinet Member is eligible to be appointed to the Scrutiny and Overview Committee or any of its Sub-Committees. The Scrutiny and Overview Committee reports annually to the Council.*

*During the year the Committee and its Sub-Committees may make recommendations to the Leader and Cabinet and exceptionally direct to the Council.*

*Members, the Chief Executive and Executive Directors or other senior staff are under a duty to attend the Scrutiny and Overview Committee or Sub-Committee to answer questions. There is a power to co-opt non-Council members onto the Committee or any Sub-Committee.*

*All meetings of the Scrutiny and Overview Committee and its Sub-Committees are open to the public and press, except where confidential or exempt information is considered.*

*Confidential or exempt business is discussed in private in accordance with the Council's Access to Information Procedure Rules.'*

9.4 There has not been a detailed study of the agendas, reports and minutes of the Scrutiny and Overview Committee or any of its Sub Committees as part of this investigation and the views and reflections of those who have been involved with scrutiny activity in recent times are relied upon to be an accurate and faithful record.

9.5 The Report in the Public Interest had a number of critical observations about the involvement of the Council's Overview and Scrutiny Committee in recent years:

- *'In response to both the growing financial gap and our letter, the Council established a Finance Review Panel in May 2020 and retained a Financial Consultant. The Financial Consultant has reviewed budget setting, monitoring and reporting processes and identified areas for improvement. Initial progress was swift and a budget gap for 2020/21 of £65 million was identified together with £21 million of in-year savings to narrow the gap if the savings were achieved. The position was reported to Cabinet in July 2020 and subject to Scrutiny and Overview Committee call-in in August 2020. Neither meeting referred the significant fact that the budget gap exceeded the available reserves, to Full Council. In our view this was a failure of governance and showed a lack of understanding of the urgency of the financial position.*
- *The July 2020 Cabinet paper 'Responding to the Local Government Challenge' set out the scale of the financial gap, high level actions being taken and statements from the former Head of Paid Service, Section 151 Officer and the Monitoring Officer. The Section 151 Officer highlighted that if the planned actions were not delivered then a section 114 report would be required. The written and verbal presentations to Cabinet did not refer to the concerns raised by the external auditor or to the Panel decision on 2 July 2020 to make an informal request to MHCLG to allow the Council to treat some of the day to day expenditure as capital. During July and August 2020, the actions being taken within the Council did not increase the quantified savings being reported to the Panel: with some variation the expected savings remained between £21 and £23 million. The Scrutiny and Overview Committee on 25 August 2020 called in the Cabinet reports 'Responding to the Local Government Funding Challenge' and 'July Financial Review' and raised a number of pertinent questions. In response to member questions the Section 151 Officer confirmed that she could not guarantee that a section 114 report would be avoided. Members of the Scrutiny and Overview Committee accepted the responses received and did not refer the matter to Full Council. In our view this did not demonstrate an understanding of the urgency of the financial position.*
- *The outturn report for 2019/20 was reported to Cabinet in July 2020 and showed movements from the position reported previously. There was no evidence of Members challenging the movements. The outturn report presented to the Financial Review Panel in June 2020 highlighted service overspends that indicated poor budget management and set out corporate adjustments of £17.7 million to reach the outturn position. None of the officers or Members present at both the Financial Review Panel and the Cabinet drew attention to the significant in-year corporate adjustments. The challenge of the outturn figures was limited and, in our view, contributed to the lack of urgency in addressing the financial position.*

- *The outturn report did include a statement from the Section 151 officer that referred to the challenges identified in the budget together with commentary that if the proposed actions were not sufficient a section 114 report would be required. Given the size of the financial gap, the Scrutiny and Overview Committee reviewed the report on 25 August 2020 where in response to a question the Section 151 officer confirmed she was not confident that a section 114 report could be avoided. The Committee raised pertinent questions in relation to the financial position but chose not to refer the reports back to Full Council. The seriousness of the financial position would in our view have warranted a Full Council discussion.*
- *The original Asset Investment Strategy set out the criteria for assessing each proposed investment property and was approved by Full Council in October 2018. The meeting had reached the time specified in the constitution for it to conclude before there was discussion of the medium-term financial strategy to establish the £100 million asset acquisition fund or the Asset Investment Strategy. The guillotine procedure was therefore used to close the meeting and the reports were approved without further discussion. This procedure is in line with the Council's Constitution. however a significant strategy such as the medium term financial strategy and asset investment strategy should have been re-considered at a time where Members had sufficient time to challenge whether the risk assessment and management within the strategy was sufficient and again indicates a lack of urgency in understanding the Council's financial position. It also indicates again the level of scrutiny and challenge by Members in respect of significant expenditure was not good enough in terms of challenging decisions that were high risk in the context of the Council's financial position.*
- *During 2018/19 two purchases were made using the Asset Investment Strategy:*

*The Colonnades with an asset value of £46 million in November 2018 and the Croydon Park Hotel with an asset value of £30 million in August 2018. The Croydon Park Hotel was purchased by Leader decision in August 2018 under delegated powers agreed at the July 2018 Cabinet meeting and reported to the September 2018 Cabinet meeting. The decision was subject to Scrutiny and Overview Committee call- in during September 2018 and the strategy covering the purchase was approved in October 2018. Minutes of the Scrutiny Committee noted that the paper (explaining the Council's proposed decision-making matrices) was produced after the first bid had been lodged and with this paper it would not have been possible to judge the soundness of the acquisition. Whilst opportunities can arise at short notice, good governance would require the strategy to be approved prior to the first purchase.*

- *The COVID-19 pandemic restrictions reduced the income from these investments as The Colonnades (a retail park) was closed and in June 2020 the Croydon Park Hotel operator went into administration. The minutes also show that the Scrutiny and Overview Committee raised queries and received assurances which were accepted. From the Autumn 2020 perspective some of the queries raised at the Scrutiny and Overview Committee appear pertinent and the Council should review the purchase of Croydon Park Hotel to identify lessons learned to strengthen the due diligence undertaken for*

*any future purchases. The investments in The Colonnades and Croydon Park Hotel were not grounded in a sufficient understanding of the retail and leisure market and have again illustrated that the Council's strategy to invest its way out of financial challenge rather than pay attention to controlling expenditure on core services was inherently flawed.'*

9.6 The Report in the Public Interest made recommendations about the Council's use of scrutiny:

*'Recommendation 2*

*The Council (including Cabinet and Scrutiny and Overview Committee) should challenge the adequacy of the reserves assessment which should include a risk assessment before approving the budget.*

*Recommendation 9*

*The Council (including Cabinet and Scrutiny and Overview Committee) need to show greater rigor in challenging underlying assumptions before approving the budget including understanding the track record of savings delivery'*

9.7 Interviewee 48 (external to the Council) told me that there was very little action or progress by the Council in July and August 2020 to address its problems and that a Report in the Public Interest was being considered at that stage. Interviewee 48 observed a Scrutiny Panel meeting in August at which Panel members were frustrated by the lack of papers. The right questions were being asked but the right answers were not being given which led to members having to make freedom of information requests to get proper answers. The matter should have been referred to full Council at this point and the concern was that although Scrutiny Panel members were asking the right questions, when they were not given the information that they were asking for they just did not press the issue and challenge what they were being told as excuses. So, by early September 2020, it was decided by the Council's external auditors that it would be necessary to issue the Report in the Public Interest at the same time as the S114 Notice was being drafted.

9.8.1 Interviewee 19 (a former and/or current member of the Cabinet or Committee Chair) said that when the Conservatives were in control until 2014 they had paid lip service to the scrutiny function but that they did not really believe in it. Interviewee 19 emphasised the importance of scrutiny being cross-party, and said that it was unclear why the Opposition does not give the scrutiny work to experienced members who are committed to the scrutiny process. Scrutiny Chairs had accepted the RIPI and its conclusions without question as that was clearly the right thing to do given the seriousness of the situation. However, Interviewee 19 believes that the RIPI underplayed the impact on Croydon Council of the COVID pandemic. Interviewee 19's main concern in March 2020 was not the state of the Council's finances but COVID. Croydon was really badly affected with more than 500 deaths early on. The (former) Leader had told Interviewee 19 that in his opinion the (former) Chief Executive was obsessed with her role as Gold Command in the summer of 2020 to the exclusion of all else, so it was hard to get any commitment to get the scrutiny function up and running again after the lockdown. Interviewee 19 said that they had first been alerted to the Council's financial problems at a Labour Group meeting in May 2020. There was a Cabinet meeting a week later which seriously underplayed the problems compared to what had been said at the Labour Group meeting. Interviewee 19 then wrote to the (current) S151 officer asking for a briefing for Scrutiny Committee but that did not happen until the July 2020 Scrutiny meeting. Due to the reduction of meetings due to COVID there had not been a pre-decision Scrutiny meeting on the July 2020 financial decisions so Interviewee 19 had to wait to see what the Cabinet would have to say at its July 2020 meeting. At the 22 July 2020 Scrutiny and Overview Committee meeting the July Cabinet papers were reviewed. The (current) Section 151 Officer and the (former) Cabinet

member for Finance and Resources had attended the meeting and answered questions. As the Committee was very sceptical about the soundness of the Council's finances as set out in the Cabinet papers for that meeting they had decided to call in the two finance papers. The Committee's conclusions and recommendations are on the record. In the run up to the 25 August 2020 Scrutiny call-in meeting there were rumours about the (former) Chief Executive resigning – or not – and there was a lot of confusion and uncertainty around. The (current) Executive Director for Place had agreed to attend the Scrutiny Committee call-in meeting in August but then did not attend so there was no advice for members available from the relevant officers.

- 9.8.2 Interviewee 19 commented that the RIPI says that the Scrutiny Committee should have sent the matter to full Council but because there were changes from the July Cabinet papers, which were set out in the cover paper presented to the August call-in meeting and things were moving on including a warning of a potential S114 notice and talk of further action at the September Cabinet meeting, the Scrutiny Committee decided not to send the matter to Full Council but instead to send its comments to the Cabinet. Had Interviewee 19 been asked for views on progress after the Scrutiny Committee in August 2020 the response would have been to be quite pleased with what Scrutiny Committee had achieved in getting the Council to acknowledge the true scale of its financial problems, so Interviewee 19 had felt aggrieved to read what the RIPI had to say about the role of scrutiny at the Council.
- 9.9.1 Interviewee 40 (a member of the Opposition Group) told me that the organisational culture that the (former) Chief Executive had been a part of and did not act to change, was all about the prevention of information being made available to elected members that might point to poor performance by the Council. Interviewee 40's requests for information/documents had always been met by passive/aggressive behaviour – *'you don't need it, you are not entitled to it etc'*. Interviewee 40 said that (former and current) Cabinet members and (current) Executive Directors have long been party to a culture that prevents elected members and others getting the information they need. In particular, the Council's (current) Monitoring Officer and the (current) S151 Officer have statutory responsibilities to ensure that the Council acts properly but in Interviewee 40's opinion they have both failed to meet their statutory responsibilities. It appears to Interviewee 40, that they were both appointed not for their competencies but because they would be complicit and compliant with the way the Council was being run. Interviewee 40 does not accept the views heard expressed that they were bullied by the (former) Chief Executive or the (former) Cabinet member for Finance and Resources into not doing their jobs properly - they should have acted properly despite what they were being instructed to do.
- 9.9.2 The (former) Cabinet member for Finance and Resources was not a member of General Purposes and Audit Committee or the Scrutiny Committee but Interviewee 40 had observed that he always turned up at meetings and intervened before the (current) S151 Officer or other officers could answer questions, blocking off professional information being provided. That was totally inappropriate, but not enough action was taken to stop it. The Scrutiny and Overview Committee must also accept some blame here for not referring some decisions back to full Council. For a long time Interviewee 40 had just accepted that this was the way things were at Croydon, but then Interviewee 40 had raised concerns with the (current) Monitoring Officer who had been polite but nothing changed, and the obstruction to being provided with the information that Interviewee 40 needed and was entitled to continue.
- 9.9.3 It had been clear to Interviewee 40 that Brick By Brick was an attempt by the Council to provide affordable housing avoiding 'right to buy' and for the Council to have a source of funds to deploy avoiding scrutiny. Interviewee 40 had been sceptical about any real prospect of any dividend for the Council, but Interviewee 40's attempts to get information about Brick By Brick through freedom of information requests were blocked by being told that it was a private company so Interviewee 40 was not entitled to the information – even though the Council was funding the

whole thing and providing the land it was building on. Interviewee 40 told me that a request had been made recently for the Council's Document Retention Policy but it had not yet been received. The (current) Monitoring Officer told Interviewee 40 two weeks after the request that the (Interim) Chief Executive was dealing with the request, then Interviewee 40 was sent the wrong document so decided to ask the Data Protection Officer direct for the right document. It seems that the Council has a large group of 'gatekeepers' that determine whether a request for information by a member is successful or not. Interviewee 40 had asked the Monitoring Officer whether the requests were reasonable but instead of giving a direct answer she had said that there is a new process being put in place. Interviewee 40 had been really frustrated because the job of officers is to help councillors get what they need and not to put obstacles in their way.

- 9.9.4 Nothing has changed much yet - the S151 Officer at the recent Special Council meeting in Interviewee 40's opinion was still not being straightforward about the level of the Council's reserves. Interviewee 40 expressed regret at not seconding the proposal for the purchase of the Croydon Park Hotel to be sent back to Council when it was called in by the Opposition and a member proposed it should go back to Council. It was clear that the (former) Cabinet member for Finance and Resources was using these initiatives and the promise of future income streams to 'paper over the cracks'. These projected income streams have not materialised sufficient to cover the endemic overspending. Things did seem to change between the Cabinet meeting in June 2020 and when the Council Plan was called in for scrutiny. That seemed to be the point that officers realised that the game was up. Interviewee 40 said that the excuse for the Council's financial mess had changed over the last year from 'austerity' to 'Brexit' to 'COVID' but by the time of the August 2020 Cabinet there was no place to hide. The (Interim) Chief Executive had made a huge impact in the short time she had been with the Council but the challenges facing her and the Council are enormous and Interviewee 40 expressed serious concern that the (Interim) Chief Executive does not have the right people in the right place to support her.
- 9.10 Interviewee 4 (a member of the Opposition Group) told me that the scrutiny function had never been taken seriously in Croydon, and whichever party has been in control it has always been a struggle to find good members who wanted to be involved in something that is not taken seriously. So scrutiny has always been the poor relation at Croydon and most elected members have little interest in it. Interviewee 4 said that the current Chair of the Scrutiny and Overview Committee seems to be really committed to it but his approach sees the scrutiny function as a helpful resource for the Cabinet rather than a mechanism for 'check and balance' based on real challenge. So any recommendations by the Committee are inherently weak.
- 9.11 Interviewee 6 (external to the Council) commented that there has been quite a bit of coverage of the 2017/18 VFM Report. The fact is that there had been lengthy discussions with the external auditors before the Annual Audit Report went to General Purposes and Audit Committee, and although the Report was not signed off, Grant Thornton did consider that the arrangements that had been put in place were appropriate. As part of the discussions with Grant Thornton Interviewee 6 had contrasted the position of Croydon with another Grant Thornton client outside London. The external auditors had accepted that it was not possible to compare that authority with a place like Croydon which at that time had major investment potential and that things were not as clear-cut as they were being portrayed. The recommendations in the Audit Findings Report had been responded to and it was proposed to earmark the anticipated dividends from Brick By Brick into the Council's reserves as well as Collection Fund surpluses. In Interviewee 6's view, it was not the case that this would be the first year that money would be put into reserves. There had been many years where there were budgeted contributions to reserves but in the end it had never proved possible as the budget was never delivered as planned.

## **Risk management/assurance**

10.1 The Council appears to have a robust Risk Management Policy Statement and Strategy that was last reviewed by members at the General Purposes and Audit Committee in October 2019:

*'Croydon Council is aware that risks will always arise from its various duties, functions and responsibilities. Some risks will always exist and will never be eliminated.*

*However, the Policy Statement recognises that the Council has a responsibility to manage its significant business risks and supports a structured and focused approach to managing risk by approval and support of the Council's risk management strategy.*

*The Council's risk management strategy's objectives are to:*

- *identify corporate and operational risks*
- *assess the risks for likelihood and impact*
- *identify mitigating controls*
- *allocate responsibility for the mitigating controls*

*The Council maintains and reviews a register of its corporate business risks linking them to strategic business objectives and assigning ownership of each risk.*

*The Executive Director of Resources & Monitoring officer and the Cabinet Member for Finance & Resources, jointly champion and take overall responsibility for embedding risk management throughout the Council.*

*The Council will embed risk management in its corporate business processes including:*

- *Strategic planning*
- *Financial planning*
- *Policy making and review*
- *Performance management*
- *Partnership working*
- *Project management*

*Reports to support strategic policy decisions and project initiation documents will include a risk assessment.*

*Croydon will also consider positive risks (opportunities) as well as negative risks (threats) in relation to its business planning.*

*Members*

*Members of committees with responsibility for risk management reviews, will receive quarterly risk management reports including all corporate 'red' risks. Members of committees will therefore instruct the accountable officer to initiate appropriate action to ensure that corporate business risks are being actively managed by the risk owners (and associated accountable officers). This includes ensuring that detailed reporting from officers on key risks is provided.*

#### *Officers*

*All staff will be given appropriate training and guidance (led by their line manager) to enable them to take responsibility for managing risk within their own working environment. All named risk owners are required to update and maintain their risk entries on the corporate risk register.*

*The risk management strategy will allow for a formalised route for the escalation of risk with risks rated as 'high amber' (rated 16) escalated from departments to the departmental Leadership Team on a quarterly basis and all risks with an 'Impact' score of 5 (extreme) escalated to Executive Leadership Team on a quarterly basis. All 'red' risks (score of 20 and above) are reported onwards to members in the form of Leadership and the General Purposes & Audit Committee.'*

- 10.2 Croydon Council's General Purposes and Audit Committee has a wide ranging brief that underpins the Council's governance processes by providing independent challenge and assurance of the adequacy of risk management, internal control including audit, anti-fraud and the financial reporting frameworks. It also deals with a limited number of matters not reserved to the Council or delegated to another Committee and related to a non-Executive function. The Committee was formed in 2014, replacing the former Corporate Services Committee and the Audit Advisory Committee.
- 10.3 A pivotal role of the Committee is its work in developing the Council's internal control and assurance processes culminating in the Annual Governance Statement (AGS). The Accounts and Audit Regulations 2015 require the Council to review the effectiveness of its systems of internal control and publish the AGS each year alongside the financial statements. In its Annual Report for 2019/20 General Purposes and Audit Committee made impressive statements about the way the information for the AGS is generated through the Council's Assurance framework including:

#### *'Risk management*

*The Council has an excellently performing, award winning risk management framework. This includes a quarterly reporting process for the Department Leadership Teams (DLT) and to the Council's Governance Board, where the Council's key strategic risks are identified and reviewed ensuring integration between the risk management framework and the strategic, financial and performance management frameworks using the reporting framework. The reporting process to Department Leadership Teams and to the Council's Governance Board is complemented by the Committee reviewing the Council's key risks. At all Committee meetings members review the current risks being reported to DLTs. There is in-depth review and challenge in relation to the risks presented and crucially the risk management framework underpinning it. The Committee has monitored the continued development of the council-wide, risk register system including a training programme for all risk owners. The content of the registers maintained on the system is refreshed quarterly by a facilitated risk review and challenge session with each Director and their management team. The Council's*

*approach to risk management is also used to manage the challenges associated with the delivery of significant projects. Internal Audit has view-only access to the risk registers to assist its risk-based audit approach, ensuring it is dealing with the most up to date information. Following audit reviews, the resultant report is mapped against the identified risk on the risk register. This gives a complete picture of how the Council is managing the challenges it faces in delivering its objectives'*

#### *'Internal Audit*

*The work of the Council's internal audit service is delivered in partnership with Mazars Public Sector Internal Audit Limited. The current contract began on 1st April 2018 and will end on 31st March 2024 with the possibility of extending for a further two years. The alignment of the audit programme to the Council's risk management framework has focused internal audit on the key challenges the Council faces and therefore, the issues that if not managed, could lead to strategic objectives not being achieved. The enhanced focus on these key challenges has continued to improve the value added by the service and is demonstrated in the increased strategic engagement of Directors and departmental Leadership Teams in the audit programme. 50% of finalised audits have full or satisfactory assurance compared to 64% for the same period last year. Council wide, the performance in audits has declined against the previous year and the head of Internal Audit has indicated that a Limited overall assurance level may be given by the time of his annual report. To help improve internal audit results and internal control more generally the Council's Governance Team continues to organise and lead, with support from other colleagues, a series of workshops under the banner of 'Doing the Right Thing' to raised awareness of key corporate policies and procedures. Over the last few years over 1000 managers and staff have attended these workshops. Immediate feedback shows that these have been very well received. An e-learning module has also been produced in the hope that this will enable more staff to benefit from this more flexible delivery. A key measure of the Internal Audit service's effectiveness is the implementation of agreed actions to address the issues identified in audits. The target for implementation of actions is 80% for priority 2 and 3 actions and 90% for priority 1 actions. The stringent approach to the follow up process has continued with tight timescales for follow up work linked to the level of assurance.'*

- 10.4 To support its understanding of issues relating to internal control and to emphasise its commitment to a robust internal control environment, the Committee invites officers to attend its meetings to give briefings in relation to strategic risks and what is being done to mitigate them. It also invites officers to give explanations where significant issues are identified through internal audits.
- 10.5 In theory, and as described in the General Purposes and Audit Committee Annual Report for 2019/20, the policies and process arrangements are robust and impressive. However, as with the scrutiny function, the Report in the Public Interest and feedback from those elected members and officers interviewed all paint a rather different picture. Major risks within the Council's revenue budgets and in its investment portfolio appear to have been downplayed with unbridled optimism and with an almost reckless disregard to the potential adverse consequences of these risks.
- 10.6 The Report in the Public Interest had the following observations about the Council's approach and performance respect of risk assurance and management:

*'Prior to recent events we as the Council's external auditor have expressed concerns and raised recommendations in relation to the Council's financial sustainability and*

*it is necessary to understand the sequence of events. The key points are set out below:*

#### *2017/18 value for money conclusion reporting and recommendations*

*We presented our 2017/18 Audit Findings Report to the General Purposes and Audit Committee in July 2018. Within our Value for Money Conclusion Report we identified concerns relating to the financial sustainability criteria and made recommendations to address the continued overspends within social care, the use of flexible capital receipts to fund transformation expenditure and the low level of reserves.*

*Our overall conclusion was:*

*Your reserves are now at a very low position and you face a number of clear risks to your continued financial health. You have plans in place to take appropriate action to manage cost pressures, increase income sources and address the level of your reserves. The progress and impact of your actions are vital to enable you to deliver a balanced budget over the medium term. On the basis that you delivered a balanced budget in 2017/18 and can reasonably expect to do so in 2018/19, we concluded that the risk that we identified in respect of your budget position has been sufficiently mitigated and that you have proper arrangements.*

#### *2018/19 value for money conclusion reporting and recommendations*

*We presented our 2018/19 Value for Money Conclusion to the General Purposes and Audit Committee in October 2019. We identified significant cost pressures from demand led services and specific cost pressures from Unaccompanied Asylum Seeker Children (UASC) together with the reported reserve position remaining low compared to other London Boroughs. We also reported that the overspend on the Dedicated Schools Grant (which had been excluded) should be considered within the reported reserves position as the forecast deficits in both 2019/20 and 2020/21 exceed the available general fund reserves in future years.*

*Our overall conclusion was:*

*On the basis of the significance of the matters we identified with your levels of reserves and the matters relating to Children's Services raised by OFSTED, we are not satisfied that the Council has made proper arrangements to secure economy, efficiency and effectiveness in your use of resources. We therefore propose to give a qualified 'adverse' conclusion. Adverse qualifications of the Value for Money Conclusion are not common within the Local Government sector with only 4 being issued to top tier authorities in 2017/18 (the latest data available).*

*Our 2018/19 report noted that the recommendations from 2017/18 had not been implemented and we raised two further recommendations on the need to manage the Dedicated Schools Grant within existing budgets and to manage the impact of Unaccompanied Asylum Seeker Children (UASC) costs and look to seek a long-term solution.*

*In our reports presented to the General Purposes and Audit Committee in 2017/18 and 2018/19 we highlighted that the Council has the lowest level of reserves of all London Boroughs and gave an adverse qualification based on low reserves in 2018/19. External parties such as the CIPFA Financial Resilience Index and the*

*Institute for Fiscal Studies have highlighted the low level of reserves at the Council. The 2020/21 budget was approved at Cabinet and Full Council without reference to the external auditor's adverse qualification of the value for money conclusion due to the level of reserves. The Section 151 officer included a £5 million contribution to reserves in setting the 2020/21 budget despite some resistance from Members. The Council did not display sufficient understanding of their reserve position relative to the financial challenges faced.*

*There have been opportunities in recent years where the Council could and should have taken action to mitigate the financial pressures that have led to the 2020/21 in-year pressures exceeding the Council's reserve position. Examples include:*

- the Council failed to address the underlying causes of service overspends which during 2017/18, 2018/19 and 2019/20 had a combined overspend of £59.3 million. The overspends were reported in budget monitoring reports but there is little evidence of Member challenge or holding officers to account for the underlying reasons for the overspends or for taking action to address and mitigate the impact in future years*
- when UASC service costs were seen to exceed the funding available, the Council's response was to lobby government for increased funding. Whilst of itself this is appropriate action, the lobbying should have been combined with action to contain service delivery costs within the funding available. The financial pressure created by large numbers of UASC was clearly understood and reported however there is little evidence of challenge by Members of the appropriateness of the costs being incurred either at the budget setting or budget monitoring stage.*
- auditor concerns on the low level of reserves were reported to officers and Members of the General Purposes and Audit Committee in July 2018. The resulting recommendations remained outstanding at the end of August 2020 indicating a lack of urgency.*
- the adverse qualification of the value for money conclusion was reported by the external Auditors to the General Purposes and Audit Committee in October 2019. Adverse qualifications are not common in local government and there was limited challenge of the auditor or officers at the meeting and no evidence that meaningful action was taken to address auditor concerns or to escalate the significance of the auditor concerns to the wider members of the Council.*

*The pace of the actions in September and October 2020 was significantly more focused than during July and August and early indications suggest that the underlying cause of the continued overspend in both children's and adults social care is now being addressed. In our view the Council missed opportunities to take substantive action earlier to address the in-year budget gap indicating a lack of understanding of the urgency of the financial situation.*

*The Head of Internal Audit indicated at the 17 March 2020 General Purposes and Audit Committee that he was proposing a limited assurance opinion for 2019/20 indicating concerns on the operation of internal controls. The Financial Consultant's brief included a review of the underlying budget setting process, budget monitoring and reporting process together with proposals for an improved*

*medium-term financial planning process. The Financial Consultant's report presented to the Panel concluded that the financial governance is currently inadequate in relation to some areas of financial planning, budget setting and budget monitoring and identified 75 recommendations for change. During the drafting period of this report the Financial Consultant's report and the Head of Internal Audit's Limited Assurance Opinion were reported formally to the General Purposes and Audit Committee on 7 October 2020.*

*The Head of Internal Audit's report was subject to detailed questioning by Members and a dedicated meeting scheduled for 20 October 2020 to discuss the Financial Consultant's report in more detail. The progress in October 2020 indicates a more robust approach is being taken to matters of concern raised to the General Purposes and Audit Committee.'*

10.7 Interviewee 42 (a former and/or current member of the Cabinet or Committee Chair) told me that in June 2019 there had been a catch-up meeting with the officers involved with General Purposes and Audit Committee (GPAC) because of concerns that important items had been removed from the agenda for the GPAC meetings. [REDACTED]

[REDACTED] Interviewee 42 was very unhappy about this as it seemed that GPAC had been reduced to little more than a Sub Committee, and it felt that something was very wrong here. When Interviewee 42 met with the officers they had told Interviewee 42 that it had been decided that the Risk Register was not part of GPAC's responsibility that Interviewee 42 knew was totally wrong. In late autumn of 2019 Interviewee 42 met with the (former) Leader to tell him that it was wrong that the (former) Cabinet member for Finance and Resources was attending GPAC meetings and was answering all the questions that were being put to officers at the meeting. He was not a member of GPAC but in any case GPAC members wanted to ask officers questions and get answers about financial issues without a councillor answering them. Interviewee 42 told me that GPAC is not a scrutiny committee but still needed to call officers and members to meetings to get honest answers to questions about the Council's financial situation. Then Xmas/New Year intervened so after the break Interviewee 42 met with the (former) Leader and the (current) Monitoring Officer to agree a plan for how GPAC should operate in the future and that senior officers and Cabinet members could be called to GPAC meetings and required to explain what was happening with the Council's budget.

10.8 Interviewee 42 also stopped the (former) Cabinet member for Finance and Resources from attending GPAC meetings. Then COVID happened and the Committee was meeting virtually. When the (former) Cabinet member for Finance and Resources was not attending meetings the (current) S151 Officer became more confident and did speak out and explain what was happening with the Council's finances. The previous Chairs of GPAC - both Labour and Conservative - had been ineffective and Interviewee 42 could see the new Chair was determined to be different and that GPAC would do its job properly. In six years GPAC had six different Chairs so there had been no consistency or continuity of approach. In February 2020 GPAC received the Annual Audit Statement and Interviewee 42 had seen no reason to panic at that stage. The external auditors were not really sounding any alarm bells by talking about serious problems with the Council's finances. However, the Grant Thornton letter of April 2020 to the (former) Chief Executive was not shared with GPAC. Had it been shared and had GPAC had the information to see what was really happening things may well have turned out very differently.

10.9 Interviewee 42 commented that the (current) Director for Finance had taken on a big job as the Council's S151 Officer when the (former) S151 Officer left and that in Interviewee 42's opinion she was never given the proper support by her line manager, the (current) Executive Director for Resources and the (former) Chief Executive. Again, things might have been very different if the (former) Chief Executive and the (former) Cabinet member for Finance and Resources had let her

do her job as S151 Officer properly. The reality in Interviewee 42's opinion was that the (current) S151 Officer had found herself very much in a difficult place between the (former) Chief Executive and the (former) Cabinet member for Finance and Resources. They did not get on well with each other and both wanted to be in charge.

- 10.10 Interviewee 1 (a former and/or current member of the Cabinet or Committee Chair) told me in their opinion that the General Purposes and Audit Committee (GPAC) was weak and Interviewee 1 had met with the GPAC Chair and the (current) Monitoring Officer at the end of 2019 to discuss how the Committee could be made more effective. It was agreed that it should be 'beefed up', meeting more regularly and with more power for the Chair, but like lots of things this got lost when COVID struck.
- 10.11 Interviewee 40 (a member of the Opposition Group) said that General Purposes and Audit Committee (GPAC) meetings have traditionally not been 'political' but until recently the (former) Cabinet member for Finance and Resources had attended meetings although he was not a member of the Committee, and he was always the first person to answer questions from members or the external auditor so officers found it very difficult to give a different response and just kept quiet. Interviewee 40 said that in their view this effectively shut down any debate or open discussion of important issues. More recently as the (former) Cabinet member was no longer attending GPAC meetings, there is a very different atmosphere as the scene is not set by political responses and officers in Interviewee 40's opinion now have more freedom to answer questions truthfully.
- 10.12 Interviewee 25 (a member of the Executive Leadership Team) said that the Annual Governance Statement 19/20 (the AGS) that was discussed at General Purposes and Audit Committee (GPAC) in October 2020 this year was put together by the (current) head of Insurance and Risk and was cleared by (current) Executive Directors and Directors before it was signed off by the (Interim) Chief Executive and the (current) Leader before it was considered by GPAC. At the beginning of this year Interviewee 25 had discussions with the Chair of GPAC and the (former) Leader and more recently discussions, including with the GPAC Chair, about how to strengthen the work of the Committee. In relation to the AGS, a number of actions have been put in place to address issues raised in internal audit findings, for example, it was agreed that Executive Directors will be engaged sooner in exercises like signing off action plans, internal audit now attend management Team meetings to discuss issues reported to GPAC and there will be a stronger link between the (current) Head of Internal Audit and ELT and the (Interim) Chief Executive. The Governance Review that commenced in 2018 was an attempt to get backbenchers more involved in a Cabinet system. Interviewee 25 said that it is a pity that the Review's proposals were not more far-reaching at that time, but now is an opportunity to revisit those recommendations.
- 10.13 Interviewee 30 (a member of staff) said that during 2019/20 there were serious concerns at the decline in levels of assurance for audit work. At the end of the year Interviewee 30 produced a chart for the General Purposes and Audit Committee (GPAC) Annual Report showing that decline over the last five years and that it had reached a point where more than 50% of the output had either limited or no assurance. Interviewee 30 had warned GPAC in January 2020 that Interviewee 30 was minded to issue a 'Limited Assurance' opinion on the Council's systems of internal control in the Annual Report as there was an obligation to do. Interviewee 30 wrote to the (former) Chief Executive in February 2020 advising her of the intention to publish the Report setting out all the information. Because of the pandemic, the GPAC meeting was delayed and rescheduled for October 2020 so Interviewee 30 presented the Report to an ELT meeting in August 2020. Interviewee 30 said that it had been one of the most unpleasant meetings in a 40+ year career. Interviewee 30 felt abused at the meeting by the (former) Chief Executive who claimed that what Interviewee 30 was saying in the Report was totally new to her and she instructed Interviewee 30 to change the Report. Interviewee 30's line manager, the (current) Director of Finance who was present at the meeting, told ELT that Interviewee 30 could not be instructed to change the Report

and it was subsequently published and discussed at the GPAC meeting in October 2020. No member of ELT other than the (current) Director of Finance gave Interviewee 30 any support at the earlier ELT meeting

- 10.14 Interviewee 35 (a member of staff) explained there is an officer system responsible for promoting and supporting the Council's risk management framework with the senior Leadership Team and elected members. At a senior (ELT level) there is an Officer Risk Management Champion (the (current) Executive Director for Resources and Monitoring Officer) and also (until his resignation) a Member Risk Management Champion, the (former) Cabinet member for Finance and Resources. In Interviewee 35's time with the Council there has been a significant deterioration in the Council's internal control environment, of which risk management is one important part. This deterioration started a number of years ago in part due to the reduction in staff resources for Risk Management (also potentially due to the reduction in the number of internal audit days) but this deterioration has accelerated in the last few years. Interviewee 35 told me that, as an example, there had been regular work with risk owners to present in depth risk presentations in relation to key risks so that members of General Purposes and Audit Committee (GPAC) could gain greater assurance on the way the risk management framework was working, but this was suddenly dropped off GPAC's agenda a couple of years ago.
- 10.15 Interviewee 35 had asked the (current) Director of Finance, Investment and Risk, why this had happened and was told that the (former) Leader had decided that these items would not be included on the General Purposes and Audit Committee (GPAC) agenda in future, but there had been no further explanation. In Interviewee 35's opinion this significantly weakened GPAC's ability to gain assurance (or otherwise) in relation to the application of the risk management framework. Interviewee 35 believes that there has been a lack of challenge either to some elected members or to the (former) Chief Executive. To illustrate how serious the lack of challenge to the (former) Chief Executive was, Interviewee 35 described what had happened at the ELT meeting on 2 September 2020, just before the (former) Chief Executive left the authority. Interviewee 35 had attended the ELT meeting with the (current) Head of Internal Audit to support the presenting of reports on the Annual Governance Statement and the Internal Audit Report respectively both of which would be on the GPAC agenda at its meeting on 7 October 2020. It was an awful occasion, the worst Interviewee 35 had ever experienced. In Interviewee 35's opinion, the (former) Chief Executive was very angry and said that this was the first time that she had been made aware of the issues raised in the (current) Head of Internal Audit's Report and the failures of governance and internal control that it highlighted. Interviewee 35 could not see how this could be the case as the (former) Chief Executive would have been aware of the increasing number of limited or no assurance internal audit reports over a number of years from previous annual reviews in the Head of Internal Audit's Reports or reports from the Council's external auditors. The (former) Chief Executive did not allow the Head of Internal Audit the opportunity to make a proper response to her claim that she had never been advised about any of this. In relation to the Annual Governance Statement Interviewee 35 was asked '*where are the areas of risk to prioritise?*' to which an explanation was given that '*they are there for you, in Tables 1 & 2 of the Statement*'. The rest of ELT made no challenge to the (former) Chief Executive's claims or the way that she was talking to Interviewee 35, and appeared to Interviewee 35 by not speaking out to be supporting her stance. Right at the end of the item the (current) Director of Finance did say that as the responsible Director she would follow up with the Head of Internal Audit on the points made in relation to his report. Interviewee 35 stated in the interview that this meeting had made it clear why (current) ELT members felt they could not challenge the (former) Chief Executive (or indeed former Cabinet Members) when it would be appropriate to do so.
- 10.16 On 25 September 2020, Interviewee 35 met with the (current) Executive Director of Resources and Monitoring Officer to discuss further changes that she was requesting to the draft Annual Governance Statement (that had previously been considered at the ELT meeting on 2 September

2020). They were asked by her to redraft the Statement to ‘accentuate the positive’, and she had also asked for changes to be made to the Head of Internal Audit’s covering report to make that more positive. They explained to her that the Internal Audit Report was an independent report by the Head of Internal Audit so it could not be altered, and any changes would need to be approved by him or, in his absence, the (current) Director of Finance as the responsible Director. It was also explained that as the Annual Governance Statement was in the name of the Leader and the Chief Executive, care should be taken to give a realistic picture. The (current) Executive Director for Resources and Monitoring Officer said that the request had come from the (former) Leader so Interviewee 35 reluctantly agreed to update the Annual Governance Statement to make it more positive than Interviewee 35 believed was justified (as evidenced by the RIPI). The draft Annual Governance Statement of the (former) Chief Executive and (former) Leader that went to GPAC on 7 October 2020 gave a more positive picture than Interviewee 35 believed was justified, again evidenced by the subsequent RIPI. At the GPAC meeting some members wanted changes made to the draft to better reflect the reality of the Council’s situation. It was agreed by the (current) Director of Finance, Investment & Risk and S151 Officer that the draft would be reviewed as suggested by GPAC members, and then it became the responsibility of the new Leader and the (Interim) Chief Executive to review their statement and agree the changes which were to be made.

- 10.17 Despite the RIPI and the subsequent public commitment by the Council to prioritise risk management as part of its response Interviewee 35 is concerned that the Council still does not take the need for robust risk management as seriously as it needs to. Risk management is not currently well resourced (and Interviewee 35 considers that the current restructure proposals will reduce capacity in this area) but equally important there needs to be a change in culture at the top of the organisation. Interviewee 35 had attended the ELT meeting on 9 November 2020, chaired by the (Interim) Executive Director for Children’s Services in the absence of the (Interim) Chief Executive. Interviewee 35 recalled a ‘throw away’ comment made at the start of this item by the Chair saying ‘*15 minutes on risk management, that is all I can stand*’. Whether or not the comment was meant to be light-hearted Interviewee 35 had been very disappointed, particularly because no member of ELT had questioned or challenged this remark despite the serious position the Authority is in. Given the significance attributed to Risk Management in the RIPI this has raised a question for Interviewee 35 as to whether there has yet been enough change to the culture, and whether the people around the top table are really committed to making the necessary changes and leading that change. Interviewee 35 also believes that ELT members should support their officers who attend for presentations for areas for which they, as ELT members, are ultimately accountable and that without this, it will not be possible for the organisation to move forward.
- 10.18 Interviewee 36 (a member of staff) told me that there had been a strong and positive relationship with the Head of Internal Audit and that they collaborate on the production of the Annual Governance Statement (AGS). Interviewee 36 is responsible for ensuring that the delivery of the AGS is completed in an appropriate timescale and is compliant with all relevant approaches. The Leader and the Chief Executive are required to sign off the AGS which has historically been a formality. However, when the draft Statement was presented to ELT (along with the Head of Internal Audit’s Annual Report) on 29 July 2020, the (former) Chief Executive became very frustrated when she saw the ‘limited assurance’ applied by the Head of Internal Audit. She requested that he change his reported assurance level and he said that he could not do this as it is related to financial year 2019/20 and it was based on the results of the internal Audit Programme. It would be a breach of his statutory duty if he amended the Report. For the next 20 minutes the (former) Chief Executive in Interviewee 36’s opinion just ‘ranted and raved’ while the rest of the current ELT said nothing and just sat there, one (current) ELT member even endorsing the (former) Chief Executive’s request.
- 10.19 The only ELT member who did try to intervene was the (current) Director of Finance who suggested that the (former) Chief Executive should talk to her outside the meeting but this

suggestion was dismissed and the (former) Chief Executive continued to demonstrate her frustration at the Report. Interviewee 36 was not really surprised at this behaviour as Interviewee 36 had personally observed this kind of conduct at a number of meetings. Interviewee 36 had been located close to the (former) Chief Executive and the rest of ELT on the 7th Floor for two years and had witnessed this kind of behaviour towards individuals on many occasions. The events at the ELT meeting also gave Interviewee 36 an insight into the way ELT operates - very silent and compliant, often with little challenge to the (former) Chief Executive.

10.20 In 2016 the organisation had decided that risk and assurance (governance and compliance) was not a priority for the Council and had begun to reduce the resources allocated to these functions. The previous Chief Executive to the (former) Chief Executive had created a Governance Directorate (headed by the Head of Internal Audit) but within 18 months the Directorate had been decommissioned. The reasoning for this was to some extent because of the need to re-allocate financial resources to rectify the outcome of the 2017 Ofsted judgement of 'inadequate'. The (former) S151 Officer at the time was a great supporter of strong risk, governance and compliance functions and was very frustrated as his advice about the need to strengthen the corporate culture and approach to governance, risk and compliance was not accepted [REDACTED]. Many members of CLT and their direct reports then began to model themselves on the (former) Chief Executive's style and approach by seeming to ignore good governance and risk management.

10.21 Interviewee 36 said that the culture of the organisation became one that rewarded those people who did not adhere to the principles of effective risk management and to demean those who did. Increasingly during the (former) Chief Executive's time at Croydon the organisation failed to understand or to respect the importance of good governance and effective risk management and compliance with the Council's policies and procedures. Some did understand it and just refused to comply while others simply did not understand it. This was at all levels within the organisation. Interviewee 36 told me that the risk management function still has a very low organisational profile but that the risk management function is needed now more than ever to help the recovery process. The RIPI focused heavily on the absence of effective risk management in the Council and this absence is highlighted by the residual consequences of this failure. The public emphasis by the Council is now about effective risk management, good governance, performance management and financial accountability – 'bread and butter' stuff for well-run Councils. Effective risk management has a key role to play in this new approach.

10.22 The Rapid Review Team concluded that:

*'The Council's Assurance process is said to rest on a number of different activities under the umbrella of a Governance Framework. The recent history of Croydon Council would suggest the assurance process has been found to be unfit for purpose as it has failed to identify, alert and escalate risk in order that the scale of problems faced by Croydon Council can be anticipated and managed in order to avoid a crisis. In fact, as is noted elsewhere, often the language and tone of reports on finance matters sat at odds with the seriousness of the situation. Whilst accepting that it is people that make these processes work, it does seem that given the failure of these processes, the arrangements for Assurance need to be reviewed and re-mapped in a single Assurance Framework document. As part of this review the Council should give consideration to appointing a Chair from outside of the majority group to its General Purpose and Audit Committee. We also recommend that the Council strengthens its relationship with its external auditor and is an early adopter of the recommendations in the recently published Redmond Review, taking the Annual Audit Report to full Council and formalising a regular meeting between*

*the Council's CEO; Monitoring Officer and Section 151 Officer with the Key Audit Partner'.*

## Performance management

- 11.1 The Report in the Public Interest makes it clear that the Council's approach to project and performance management has been ineffective and needs significant improvement. A number of those interviewed in this investigation pointed to high levels of tolerance for poor organisational performance. There simply is no evidence of the organisation holding people to account for what they do and how they do it, and there is an absence of constructive challenge. That does not necessarily mean that the Council has many poor performers amongst its staff and senior management but rather that it lacks the cultural context and organisational systems and processes to give it confidence that things are done well and to hold people to account when they are not. Overall it is the responsibility of the Executive Leadership Team and the Chief Executive to create and maintain an appropriate cultural context, and in particular it is the responsibility of the Resources Directorate to ensure that the organisation has the right policies, systems and processes it needs to ensure that there is meaningful performance management and accountability. This does not seem to have been the case in the past, or rather there does not appear to have been universal commitment to effective performance management by either elected members or ELT and Directors despite the efforts of the staff in the Programme Office in the Resources Directorate
- 11.2 The LGA Review of the Resources Directorate pointed to the collection and use of the 'right' data as a recurrent theme of those who were consulted and is an issue that others have spoken of during interview. The Data Team has been relocated into the Policy and Performance Office which seems a logical home, but there is significant work to do to identify and agree what data is needed, what will it be used for, who will collect it, who will input it to systems, and who will monitor and update it. Senior managers are concerned about the absence of or accuracy of workforce data, financial data and performance data all of which compromises effective decision-making or results in the wrong decisions being made.
- 11.3 Interviewee 31 (a member of staff) told me that that some of the senior officers who could and should have spoken up and challenged members to guide their decision-making and, when appropriate to say no, in their opinion failed to do so. Interviewee 31 said that in their view nobody seemed able or willing to provide that challenge to members and the Council ended up as an organisation that did not say no to anything, no matter what the cost and whether or not it could be afforded.
- 11.4 Interviewee 31 gave an example related to the Corporate Plan which was adopted at a Cabinet meeting. The Plan was written with strong direction from both the (former) Leader and the (former) Chief Executive, but then a separate team worked with the ELT to produce a set of Key Performance Indicators (KPIs) that bore no relationship to the Corporate Plan that had been adopted. Nine months later a progress report on implementation of the Plan was prepared for the Cabinet but the (former) Leader and (former) Cabinet Members were very unhappy that any KPI should be shown as 'red' (i.e. not implemented) in the rating system used. The (former) Chief Executive got directly involved with the issue and she was also unhappy about any negativity about achievements or the lack of them in the progress report that had been prepared for the Cabinet meeting. Interviewee 31 had worked with another Director to try and resolve the issues, but eventually was told to leave it alone because apparently when Interviewee 31 got involved it became too 'political'. It is not clear to Interviewee 31 either whether the (former) Chief Executive/ELT had a full understanding of just how bad things were. Interviewee 31 suspects not, and does not think that there was any corporate conversation about performance. So performance was only addressed within service silos, and the lack of a performance culture meant this was not given the necessary priority.
- 11.5 Interviewee 34 (a member of staff) told me that to their knowledge the (former) Cabinet member for Finance and Resources had changed the definition of 'amber' in the RAG ratings in the

Performance Report that was presented to Cabinet in September 2019 and that another (former) Cabinet member had changed one Housing rating from 'red' to 'amber'. Interviewee 34 had raised this with the line manager who had then raised it with their line manager, the (current) Executive Director for Resources and Monitoring Officer, but that nothing had resulted from this. There had been no debate at the Cabinet meeting about the Performance Report, and there was no comment or challenge from Opposition members who attended the Cabinet meeting except for some complimentary comments about Children's Services.

- 11.6 Interviewee 11 (a former and/or current member of the Cabinet or Committee Chair) responded to this when raised in interview by saying that the definition of 'amber' had somewhat perverse outcomes. For example, on the HRA budget, because the budget was zero, any variance (even by one pound) was treated as 'amber'. This was even in the case where the HRA was forecasting a surplus, and this had seemed to be nonsense to Interviewee 11. The other thing that Interviewee 11 recalled was the discussion on almost every performance report was about whether to class items on a summary grid as 'red', 'amber' or 'green'. Because there were a whole series of performance indicators making up each item on the summary grid, there needed to be a discussion about those. Officers had typically counted together the 'reds', 'ambers' and 'greens' and had then suggested a colour accordingly. However, in Interviewee 11's view, not all performance indicators necessarily deserved the same weight.
- 11.7 Given the apparent lack of organisational commitment to performance management in the past it is encouraging that the senior management restructure proposals that have been produced by the (Interim) Chief Executive have taken account of the need for the Council's management arrangements to be more effective, and that there is a requirement for the Council to function as a corporate whole and to have shared processes, language and approaches. At present, it is possible for separate IT systems to be commissioned and run in different Directorates, financial record keeping is done on separate systems and spreadsheets, expenditure on legal advice appears can be commissioned separately and there are individual performance and improvement functions not connected into a corporate system. This restructure is not proposing to centralise everything but to explore ways of getting greater co-ordination and shared intelligence from activity plus removing any unnecessary business overheads. Roles will be designed to be professional leads who draw together shared processes and systems.
- 11.8 There has been much criticism in the recent reports about the culture and practice of governance in the Council and a programme of development for members and officers will be invested in and a review of internal governing bodies will be undertaken to ensure clarity on roles and responsibilities. The new Assistant Chief Executive's Directorate will provide the supporting infrastructure for the Croydon Renewal Improvement Plan, to lead the co-creation of the Council's organisational development and learning plans, to enhance the impact of the equality resources in the Council, to provide intelligence on and the opportunity to learn from resident feedback and demand patterns and to transform the work of the Council to fully maximise the access benefits and efficiencies of a digital delivery platform for council services. This is an entirely new Directorate and brings together a number of relevant functions in respect of performance that are currently situated in different parts of the Council. The Directorate will provide the engine room for the delivery of the Croydon Renewal Improvement Plan and has the new Programme Management Office. The Council's existing Performance Management Team is also situated in this Directorate and will support the work of the PMO. The Human Resources function including Organisational Development and the Learning and Development functions are also located in the new Directorate along with the Communication and Equalities resources to maximise synergies between them and to jointly drive the delivery of the Croydon Renewal Improvement Plan.

## Asset investment

- 12.1 The Report in the Public Interest identified further areas of concern which have impacted on the Council's financial sustainability.

### The Council's Asset Investment Strategy

The Medium-Term Financial Strategy for Croydon 2018–2022 established an Asset Acquisition Fund of £100 million to invest in property to generate an ongoing income stream for the Council:

*'The Council has an aspiration to secure medium to long term revenue returns from sound property investment principally within the Borough. If chosen carefully the revenue returns should be consistent and less prone to fluctuation due to the protection within the lease agreements. These returns will be key to future revenue income and enable expenditure on services. The Council will be looking at the opportunity that property investment offers to help generate a secure revenue stream over the medium - to long-term. However, less secure assets that offer future revenue potential with higher returns that also unlock the development of strategic sites will also be considered. These may typically be part vacant properties in district centres that requiring some degree of refurbishment or additional development to secure their full letting potential. Each opportunity will be assessed against a matrix. The matrix will have scoring against each of the key elements and categorise into Excellent, Fair, Good and Marginal investments.'*

- 12.2 The original Asset Investment Strategy set out the criteria for assessing each proposed investment property and was approved by full Council in October 2018. The meeting had reached the time specified in the constitution for it to conclude before there was discussion of the medium-term financial strategy to establish the £100 million asset acquisition fund or the Asset Investment Strategy. The guillotine procedure was therefore used to close the meeting and the reports were approved without further discussion. This procedure is in line with the Council's Constitution however a significant strategy such as the medium term financial strategy and asset investment strategy should have been re-considered at a time where members had sufficient time to challenge whether the risk assessment and management within the strategy was sufficient and again indicates a lack of urgency in understanding the Council's financial position. It also indicates again the level of scrutiny and challenge by members in respect of significant expenditure was not good enough in terms of challenging decisions that were high risk in the context of the Council's financial position.
- 12.3 During 2018/19, two purchases were made using the Asset Investment Strategy: The Colonnades (a retail park) with an asset value of £46 million in November 2018 and the Croydon Park Hotel with an asset value of £30 million in August 2018. The Croydon Park Hotel was purchased by the (former) Leader's decision in August 2018 under delegated powers agreed at the July 2018 Cabinet meeting and reported to the September 2018 Cabinet meeting. The decision was subject to Scrutiny and Overview Committee call-in during September 2018 and the strategy covering the purchase was approved later in October 2018.
- 12.4 The minutes of the Scrutiny and Overview Committee noted that the paper explaining the Council's proposed decision-making matrices was produced after the first bid had been lodged and without this paper it would not have been possible to judge the soundness of the acquisition. The RIPI pointed out that whilst investment opportunities can arise at short notice, good governance would require the investment strategy to be approved prior to the first purchase.

12.5 The COVID-19 pandemic suppression measures reduced the income from these investments as The Colonnades was closed and in June 2020 the Croydon Park Hotel operator went into administration. The minutes also show that the Scrutiny and Overview Committee raised queries and received assurances, which were accepted. From the perspective of autumn 2020, some of the queries raised at the Scrutiny and Overview Committee appear pertinent and the Council should review the purchase of Croydon Park Hotel to identify lessons learned to strengthen the due diligence undertaken for any future purchases. The investments in The Colonnades and Croydon Park Hotel were not grounded in a sufficient understanding of the retail and leisure market and have again illustrated that the Council's strategy appeared to be to invest its way out of financial challenge rather than pay attention to controlling expenditure on core services. This was inherently flawed.

#### Treasury management

12.6 Local authorities may borrow monies for any purpose relevant to its functions or for the purpose of the prudent management of financial affairs. The Prudential Code and Treasury Management Code sets out requirements for local authorities including the need to prepare a Treasury Management Strategy. Croydon Council's Treasury Management Strategies shows that the amount of borrowing increased in recent years with further borrowing planned for future years. The large increase in borrowings was for four purposes:

- the Revolving Investment Fund;
- the Growth Zone;
- the Asset Investment Strategy;
- and the General Capital Programme.

#### The Revolving Investment Fund

12.7 The Revolving Investment Fund (RIF) was established to support the delivery of the Council's strategic aims specifically for housing and other developments. The RIF is the mechanism by which the Council has lent money to developments and the RIF is funded by Council borrowing. The RIF lending between 2020/21 to 2022/23 was £223.2million (estimate). The significant elements of the RIF have been invested in three schemes: Brick By Brick; Croydon Affordable Homes; and Taberner House. All three schemes involve complex commercial transactions and individual business cases have been taken to Cabinet. However, the RIPI stated that there is little evidence of challenge by members in meetings (Full Council or Cabinet) on the deliverability of the schemes or the impact of each scheme on the long-term financial position of the Council. Increased borrowing to the schemes within the RIF is reported, but there is no evidence of any challenge on whether previous borrowing to the scheme has delivered the intended benefits or whether the third parties' financial position remains sound before further borrowing has been agreed. A Fund of the value of the RIF should have a risk assessment that is updated regularly to reflect changes in market conditions. No such risk assessment has been undertaken. In the view of the external auditors this is another example of a lack of financial rigour being exercised by members, and they recommend that the risk management of the RIF needs to be considered before agreeing further loans.

The principle of the RIF was to lend on at commercial rates whilst borrowing at lower rates with the net returns contributing to the Council's financial position. The interest receivable amounts continue to increase, however the 'outstanding debtors' indicate that Brick By Brick has not yet made any interest payments to the Council with £5 million owing at 31 March 2019.

The **Growth Zone** borrowing was estimated to be £121 million by the end of 2020/21 and the Council will need to revisit the underlying assumptions and actions following the impact of the pandemic.

#### Affordability

12.8 The Treasury Management Strategy was presented at Cabinet prior to being approved at Full Council. The strategy included Prudential Indicators that enabled officers and elected members to make decisions on the affordability of the proposed strategy. There is little evidence of members challenging the safe use of borrowing powers when approving the Treasury Management Strategy reports in particular:

- the Capital Financing Requirement (CFR) continued to increase, and was breached in 2017/18, 2018/19 and the outturn CFR presented in the 2020/21 Treasury Management Strategy indicates that £10 million more borrowing was taken out than required
- the Authorised Borrowing Limit indicator was breached by £2 million in 2018/19
- the General Fund impact of Prudential Borrowing on Band D Council tax levels shows the cumulative impact of increased borrowing between 2017/18 and 2020/21 being an increase of £124.35 on a Band D council tax.

The key prudential indicators show an increasing level of debt that is at or just above the levels considered prudent. This is a complex area and the RIPI concluded that lack of challenge from members indicates that specific training in this area is needed to enable members to provide an appropriate level of challenge on the affordability of the Treasury Management Strategy.

12.9 The Council is required by statute to make a prudent provision for the repayment of its debt and to have regard to MHCLG guidance in calculating the Minimum Revenue Provision (MRP) and to publish its policy annually. (Statutory guidance issued under section 21 (1A) of the Local Government Act 2003 and the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003). The Council made changes to its 2019/20 MRP policy in respect of how much MRP is charged for borrowing related to loans to third parties and loans to purchase investment properties. The new policy indicates that loan repayments from third parties and income from investment properties leads to no MRP being set aside. The RIPI noted that there were significant loans to Brick By Brick which have not been repaid and to date the Council has not received any dividends from Brick By Brick and it was also noted that the Croydon Park Hotel had entered administration resulting in a significant reduction in investment income and increased costs.

The RIPI concluded that taken together it is difficult to see how the Council's new approach of no MRP for loans to third parties and for investment properties has been prudent.

The RIPI made a number of recommendations in respect of asset investment:

*R11. The S151 officer should revisit the Growth Zone assumptions following the pandemic and make recommendations to Cabinet and Council for the continued investment in the scheme.*

*R12. The S151 officer should review the financial rationale and associated risks and make recommendations to Cabinet and Council on whether the Revolving Investment Fund should continue.*

*R13. The S151 officer should review the purchase of Croydon Park Hotel to identify lessons learned to strengthen future due diligence arrangements.*

*R14. The Cabinet and Council needs to re-consider the Treasury Management Strategy for the ongoing affordability of the borrowing strategy, the associated risks and identify whether alternative options can reduce the financial burden.*

*R15. The Chief Executive should arrange detailed Treasury Management training to assist Members to better understand and challenge the long-term financial implications of matters reported within the Treasury Management Strategy.*

*R16. The S151 officer should revisit the Minimum Revenue Provision policy to demonstrate that a prudent approach is being taken.*

## 12.10 **Subsidiary companies**

In recent years the local government sector has seen many Councils establish a number of subsidiary companies to perform quasi-commercial functions. Croydon Council has established a number of such subsidiary companies with the aim of generating additional income. The governance of the subsidiaries, whether wholly or partially owned by the Council, is vital to both understand whether the arrangement is delivering the intended benefits and to safeguard the Council's interests that are held by the subsidiary and ensure that the Council is not exposed to adverse risks and liabilities.

The RIPI pointed to the Council having established a complex group structure with little evidence that the complexity and associated risk to the Council's financial position is understood by members or officers based on two specific examples:

### Brick By Brick Croydon Limited

Brick By Brick Croydon Limited (Brick By Brick) was set up as a limited company with the Council being the sole shareholder to deliver housing development aiming to address the shortage of housing and the initial business case was presented to Cabinet in September 2014 with the governance arrangements being reported to Cabinet in June 2016. By the 2020/21 Budget, the governance arrangements had been strengthened through the Shareholder Investment Board and a Client Monitoring Group. As the sole shareholder of Brick By Brick the Cabinet receives the annual business plan from Brick By Brick which based on a review of the Cabinet minutes is subject to a very limited level of challenge and equally limited level of detail. It would be normal to expect the Council to have clear governance arrangements on how its interests (as sole shareholder) are safeguarded and the extent to which the original aims of the business plan are being achieved. It would also be expected to see a formal reporting mechanism from the Council nominated Directors back to the Council. Examples where the Council has not shown sufficient scrutiny of its wholly owned company include:

- the initial intention was for a proportion of the houses developed to be affordable housing through Shared Ownership. In January 2020, when potential purchasers were unable to obtain mortgages for the properties, the Council became aware that Brick By Brick had not registered Brick By Brick as a Shared Ownership Provider. This failure indicates a lack of understanding of the requirements and how the regulatory context developed over time.
- the original business case approved by Cabinet in March 2015 included the recommendation that the key legal and structural components of the company will

not be more than 50% financed by the Council. By the 2017/18 business plan, the funding mechanism was 75% borrowing and 25% equity. The ongoing financial rationale for the Council to provide 25% equity should be reviewed from the perspective of the Council's financial position.

- the annual business plans continue to extend the time that Brick By Brick will be able to utilise receipts against future funding requirements or will repay the loans. The delay in the company being self-financing and repaying loans should be reviewed to determine whether the Council can continue to afford its investment in Brick By Brick.
- the Council agrees individual loan agreements for each scheme with Brick By Brick which include loan covenants. Based on the loan agreements, a number of loans have been reviewed where covenants have not been met. The Council should be monitoring compliance with loan covenants and reporting breaches to Members. For example on a covenant requiring audited accounts within 90 days of the year end. At the end of August 2020 (153 days after the year-end) the audited accounts for Brick By Brick were not available.
- a covenant requiring loan interest to be paid at the completion of the scheme. At 31 March 2020, the Council is yet to receive loan interest payments from Brick By Brick of £14.4 million of which £5 million was outstanding at 31 March 2019.
- the loan agreement sets out the loan repayment date. At 31 March 2019 of the £221 million loan agreements between the Council and Brick By Brick, £99 million had been drawn down with a further £94 million drawn down in 2019/20. Based on a review of the loan agreements, £110 million of those loans were due for repayment and monies had not been received by the Council. Repayment dates can be varied by written consent however no confirmation has been found from the Council that written consent was formally requested or provided to vary the loan agreement repayment date. Brick By Brick's annual business plan updates the expected date when all loans will be repaid and the Cabinet approval of the annual business plan has been considered by Brick By Brick to imply consent. As the loan agreements are legal documents it would be reasonable to expect any variation to be formalized. The Council has confirmed that its opinion is that any variation of the loan repayment date would require formal documentation. The Council should take action to clarify the existing loan repayment position with Brick By Brick and agree formal processes for any future variation in loan repayment date.
- the initial business case approved by the Council expected Brick By Brick would build and sell properties and pay dividends to the Council from the profit generated. The slippage in progress in building and selling properties has delayed Brick By Brick making a profit and no dividends were received by the Council adding further pressure to the Council's financial position.
- Brick By Brick set up its own internal trading arm, Common Ground Architecture. The first reference to this is in Brick By Brick's business plan for 2018/19 presented to Cabinet in February 2018. By February 2019, the 2019/20 Business Plan refers to the trading arm taking on external clients. There is no evidence that the Council, sole shareholder of Brick By Brick, considered the impact on the Council's interests or the risks inherent in establishing a trading arm that takes on external clients or whether the trading arm is in line with the Council's strategic intention for Brick By Brick.

- at the Cabinet meeting in July 2020 the Council made a decision to incur an additional £30 million of borrowing to purchase properties from Brick By Brick to increase the affordable housing supply available. This is not in line with the original business case for Brick By Brick approved by Members in March 2015. The most recent business plan presented to Cabinet states Brick By Brick ‘*will offer first refusal on all of our homes to the local authority in order to help address local housing need*’. The underlying financial case from the Council’s perspective for the purchase of these properties did not address the circular nature of the Council taking out borrowing to lend to Brick By Brick to build the properties and then the Council taking out additional borrowing to purchase properties from Brick By Brick. This should be urgently reviewed.

The RIPI conclude that the financial business case from the Council’s perspective for Brick By Brick should be urgently reviewed before agreeing any further borrowing.

#### London Borough of Croydon Holdings LLP

As part of the Revolving Investment Fund, the Council has lent money to schemes designed to support the supply of housing. Two of the schemes that had £55.1 million of loans outstanding at 31 March 2019 were Croydon Affordable Homes LLP and Taberner House LLP. The Council has a 10% holding in each firm and the Council’s holding is held by London Borough of Croydon Holdings LLP which itself is wholly owned by the Council.

The increasing complexity of the group structures, the interaction between different subsidiaries, the longer-term financial impact for the Council and how to safeguard the Council’s interests is not clearly understood. The subsidiaries are covered by Companies Act legislation and there is a knowledge and experience gap which puts the Council at risk of unintended consequences. For example, the Council does not have direct access to Croydon Affordable Homes LLP despite providing significant loans and the Council’s representation is through London Borough of Croydon Holdings LLP. In December 2019 London Borough of Croydon Holdings LLP was dissolved by compulsory strike off by Companies House for a failure to comply with filing financial accounts and the assets of this company were transferred to the Crown. The Council is taking action to recover the company and associated assets but was unable to quantify the assets and liabilities of this company (£100) until late October 2020.

Having a company dissolved by compulsory strike off is a failure of governance and there is as yet no information that the dissolution of London Borough of Croydon Holdings LLP has been reported to Cabinet or the General Purposes and Audit Committee. The Council has failed to establish adequate arrangements to govern its interests in subsidiaries and there is therefore not an appropriate mechanism for members to challenge either the arrangements or the continued extension of establishing additional companies.

12.11 The RIPI made a number of recommendations in respect of the Council’s approach to subsidiary companies:

*R17. The Cabinet and Council should reconsider the financial business case for continuing to invest in Brick By Brick before agreeing any further borrowing.*

*R18. The Cabinet and Council should review and reconsider the ongoing financial rationale for the Council in the equity investment arrangement with Brick By Brick.*

*R19. The S151 officer and monitoring officer should monitor compliance with loan covenants with Brick By Brick and report breaches to members.*

*R20. The Cabinet and Council should review the arrangements to govern its interest in subsidiaries, how the subsidiaries are linked, the long-term impact of the subsidiaries on the Council's financial position and how the Council's and taxpayers interest is safeguarded.*

- 12.12 The RIPI also acknowledged that the Council had engaged with the matters raised in the Report and has taken a number of actions including;
- engaging external consultants (PwC) to undertake a Strategic Review of the Council's group of companies and entities
  - commissioning external support to prepare accounts for all seven companies that form part of the Croydon Affordable Housing company structure including preparing a set of financial statements to enable London Borough of Croydon Holdings LLP's registration to be reinstated
- 12.13 Interviewee 48 (external to the Council) told me that concerns about all this had been raised on many occasions and raised formally in the Audit Plan that was produced in February/March 2020. A request had also been made for a review of these groups in the Financial Review Panel Terms of Reference – but it seemed that it was the only voice showing any concern about this. The PwC review of companies is very helpful in understanding exactly what has taken place here, with huge investment in failing companies by a Council that did not have the resources to do this. Interviewee 48 told me that there are real issues about record keeping by the Council. A key example of this is that allegedly there were discussions about the proposed investments in the Croydon Park Hotel and yet there is no record that can be found to pass to Interviewee 48 of those discussions. Interviewee 48 was told by the (former) S151 Officer that there was a record of the discussion that took place of the risk assessment of major investments by the Council but the (current) S151 Officer had told Interviewee 48 that she could not find the record of any such discussion. In Interviewee 48's opinion this is simply not good enough when significant public money is being invested. Linked to this is that there is no detail that anyone was keeping an eye on the loans to Brick By Brick and whether the promised returns would materialise – nobody seems to have been responsible at the Council for monitoring things like this.
- 12.14 Interviewee 53 (external to the Council) said that work has always been focused on regeneration and development and the associated delivery of housing in town centre sites. Interviewee 53's appointment at Croydon coincided with a change of administration so the Labour Group was in its first term in 2014. Interviewee 53 told me that the new administration had seemed genuinely committed to improving the supply of affordable housing in the Borough and there were a lot of potential sites for affordable housing that had not been progressed so the key task was just that – to progress the development of these sites. Various options for delivery of an ambitious programme of developing these sites were considered and the Brick By Brick model was the eventual choice. Croydon at that time was in the middle of a lot of new development with a fast developing local economy and property market that could assist the provision of affordable housing in the Borough. A lot of the background work was done in 2015 and then Brick By Brick started to trade as a company, with the Council as single shareholder, in 2016.
- 12.15 Interviewee 53 told me that Brick By Brick was deliberately set up to operate independently of the Council, despite it being the only shareholder, and was designed to be commercially '*fleet of foot*' as a developer and able to identify and progress opportunities quickly and not be subject to the kinds of time constraints under which local authorities understandably have to operate. The company initially promoted around 30 planning proposals involving the provision of 700 new homes. Many of these sites were contentious so there was quite a lot of opposition to the plans from the community, and indeed from a number of ward councillors.

- 12.16 In Interviewee 53's opinion, the new administration really did want a transformative change in housing supply to work so there was a lot of senior level political support for Brick By Brick, particularly from the (former) Deputy Leader who also had the Cabinet portfolio for Housing. However, notwithstanding this political support, in practice the programme turned out to be a real challenge for the Council as an organisation, and it became clear that it was finding it difficult to cope with the pace of Brick By Brick work - such as processing 30 complicated planning applications simultaneously - and there was a lot of conflict between Brick By Brick and various departments within the Council as a result. As the company grew and began to get more and more independent of the Council, this created a challenge regarding the appropriate governance arrangements that needed to be put in place to protect the interests of the Council as the single shareholder. The then Executive Director of Resources and the (former) S151 Officer had been very involved with Interviewee 53 since inception of the company and continued to be the main point of contact with the Council and fully understood the financial and delivery complexities of Brick By Brick.
- 12.17 The Board at that time comprised the Brick By Brick Chief Executive and Managing Director, two independent Board members and the Council's (current) Finance Director appointed as a non-Executive Director by the Council. The Board was pretty independent and stable at that time. More and more it became an independent development company and, although wholly owned by the Council, it developed a distinctly different ethos and operational culture to a typical Council service department. When the (former) S151 Officer left the Council in 2019 in Interviewee 53's opinion this presented a real problem for the company because he had been the champion within the Council and held a great deal of intellectual capital which was never replaced. Because the (current) S151 Officer was conflicted as a non-Executive Director on the Board she was replaced by the (current) Executive Director for Place.
- 12.18 Interviewee 53 said it was clear that from this point onwards the Council's practical engagement in the Board reduced noticeably. At the same time Brick By Brick became an employing entity, and any Council development staff who had been working on Brick By Brick TUPE'd into the business. Interviewee 53 said that increasingly it had felt that what was sorely missing from the Council's approach was the significant contribution that the (former) S151 Officer had made as the '*grease in the wheels*' between the company and the Council and this was never replaced. In his absence it was exceptionally difficult to build a functional collaborative working relationship between the two organisations.
- 12.19 Brick By Brick continued to grow with an expanded development programme on 40 more sites with a further 800 homes to be constructed. The refurbishment of Fairfield Halls was ongoing and planning applications were made for the land around it. Despite the expansion of the business there was an increasing erosion of support by the Council for Brick By Brick. By now the company had more than 40 employees all of whom were working on a portfolio of projects that required input from the Council to be successful. By contrast, the Council had not taken on a single extra person to service this workload, nor replaced the expertise that had left the organisation to work for Brick By Brick.
- 12.20 Interviewee 53 said that there was an increasing loss of senior Executive support for the company and the company ended up relying increasingly on political support from the then leading Cabinet members. A lot of issues were escalated to the Council through the (current) Executive Director for Place in her role as non-Executive Director on the Board, but to Interviewee 53's knowledge nothing really happened as a result. The end result was a lot of delay with the programme for which Brick By Brick has received all the criticism. The company was being publicly criticised for delays and for the perceived failures in the delivery of the planned programme etc. For some reason it seemed to Interviewee 53 that the Council as an organisation was unable or unwilling to provide support to the company it had set up. Despite what is now being claimed, all decisions about Brick

By Brick in Interviewee 53's view were formally secured through the established governance arrangements, and Interviewee 53 was of the opinion that they had been careful to ensure that this was the case. The problem was that though the decisions were properly made, the Council was under resourced to deal with the company's need for support, but maybe there was more to this than simple under-capacity. What was really needed was a dedicated resource at the Council to deal with the company's development programme. Interviewee 53 had raised this frequently at Board meetings and subsequently at the Shareholder Investment Board meetings, but there was never sufficient action taken by the Council.

- 12.21 By way of example, Interviewee 53 said that this resulted in a S106 agreement sitting on someone's desk at the Council for 11 months just waiting to be signed off, which ended up costing the company, and therefore the Council, more than £800k. These types of issues were escalated repeatedly and also it seemed by members attending the Shareholder Investment Board, but still in Interviewee 53's view no remedial action was taken. Interviewee 53 felt there has not been the consistent necessary collective support from the executive side of the Council for the company, and this was particularly the case when the (former) S151 Officer left the Council. In theory, it was the Council's non-Executive Director on the Board who was supposed to be that official conduit, but it seems to Interviewee 53 that there was never the level of engagement and support, or perhaps the level of expertise or understanding about the way that development companies work, from the Council appointed Directors to make this happen. At least that is how it appeared to Interviewee 53 – it may be that there were issues or contributory factors to this that Interviewee 53 was not aware of.
- 12.22 Attempts were made to 'beef up' the governance arrangements - for example the Shareholder Investment Board was set up – but Interviewee 53 said that there was still an absence of the necessary executive engagement, support and understanding about the company. The concerns raised in the RIPI and the PwC reports that the Council did not get the necessary information about the company and its performance are in Interviewee 53's view simply not correct. But Interviewee 53 suspects that there was a lack of understanding at the Council about the way companies like Brick By Brick work and a lack of expertise to interpret the information provided. The Council is looking at options following the PwC report and Interviewee 53's best guess is that it wants the company wound up and a subtle process to achieve that seems to be underway. In Interviewee 53's personal view it is a successful development company that has delivered a lot of new housing in the Borough, including a great deal of affordable housing.
- 12.23 Despite this, Interviewee 53 feels that Brick By Brick is being 'hung out to dry' as the scapegoat for the failings of others and for the Council's financial problems.
- 12.24 Interviewee 1 (a former and/or current member of the Cabinet or Committee Chair) said in their opinion that it is now clear that members were not given the necessary level of detail about what was happening and going wrong with Brick By Brick. The (current) S151 Officer confirmed at the recent Council meeting dealing with the S114 notice that as late as July 2020 she believed that there would be repayment of loans and interest repayments by Brick By Brick in the current financial year so no wonder members did not know what was happening. The Council has had two non-Executive Directors on the Board of Brick By Brick, first the (current) Director of Finance who then was replaced by the (current) Executive Director for Place. That had reassured Interviewee 1 at the time, but Interviewee 1 now knows that there was no reliable feedback coming to the Council about the serious financial issues with the company. Interviewee 1 stated that no one was telling the Cabinet that Brick By Brick was heading for serious trouble.
- 12.25 Interviewee 11 (a former and/or current member of the Cabinet or Committee Chair) asked whether members were given the right information about what was going on with Brick By Brick. Having senior officers of the Council as non-Executive Directors of Brick By Brick was meant to be a

vital element of governance. The (current) Director of Finance served as a Director until January 2019 and was replaced by the (current) Executive Director of Place. However, no concerns about the financial management of the company or anything about Brick By Brick's problems were being relayed back to Interviewee 11 or to the Cabinet by the Council's appointees to the Board. Both the (current) Finance Director and the (current) Executive Director of Place should have made Interviewee 11 and the Cabinet aware of any problems or issues but nothing was ever said.

12.26 The RIPI is critical of the decision to purchase the Croydon Park Hotel and asserts that the Council did not know what it was doing. Interviewee 11 stated that they were fully aware that the hotel was a small operator and not part of a large chain and the pre-purchase external advice was clear that there were risks involved, but that if the hotel was not successful for whatever reasons there would be financially viable options for the site. Overall, the asset investment portfolio has been in Interviewee 11's view profitable and Interviewee 11 is still confident that the Council's asset investment portfolio will make money and said that it is producing significant income for the Council this financial year despite the pandemic. At the Extraordinary Council meeting in autumn 2020, an Opposition councillor raised the issue of an overall facilities agreement with Brick By Brick signed in 2016. The (current) S151 Officer said that she was unaware which politician had seen it and, indeed, it was not clear whether she knew its existence or all its terms. This was even though, to Interviewee 11's knowledge, she had been the Deputy S151 Officer at the time and on the Board of Brick By Brick. However, it appears that it had requirements that would have been helpful in managing the Council's relationship with Brick By Brick (e.g. provision of monthly management accounts) and it was clear from the current Section 151 Officer's responses these provisions were not complied with and financial information had had to be chased regularly. At the Council meeting Interviewee 11 had responded by stating that this overall facilities agreement and the breaches were not known about, nor indeed was it known what the management financial information that was being supplied was showing.

12.27 Interviewee 19 (a former and/or current member of the Cabinet or Committee Chair) told me that in May 2018 everyone had expected the Finance Team and the (former) Cabinet member for Finance and Resources to propose deep cuts (as there had been a number of years where either Children's Services or Adult Social Care had overspent) to address the financial problems, so Interviewee 19 had been surprised to find out that the strategy was to set up commercial enterprises to produce income streams to compensate for the loss of other income. Some of these initiatives, for example the purchase of the Croydon Park Hotel, were never discussed fully with Labour Group members, they just happened. The Croydon Park Hotel purchase was called-in in August 2018, and when Interviewee 19 reviewed the papers as part of the preparation for the meeting it was clear that there were no strategy or policy papers to explain or justify the purchases. It was agreed that the (former) Executive Director for Resources and S151 Officer would bring an updated draft Asset Strategy Paper to the call-in Scrutiny Committee meeting as this would allow the Committee to judge whether the policy used to justify the purchase was robust. Interviewee 19 said that is why the September 2018 Scrutiny Committee spent more time looking at the Assets Strategy rather than the actual purchase. It would obviously have been better had the Scrutiny Committee spent more time discussing the costs and benefits of spending £27m on a hotel but it seemed to be in line with the draft strategy and there were a number of part-B papers that explained the valuation for the purchase. But there was cross-party support for the purchase, a fact that is being played down now.

12.28 Interview 19 commented that the general idea of buying back assets in Croydon Town Centre to take back control of the Centre and to produce income streams was fine in principle and if it had worked well the strategy was appropriate and would have been beneficial which is why Interviewee 19 had supported it. But this strategy clearly went wrong because of the secrecy and the poor management of Brick By Brick and the other companies. No one had flagged up any concerns about the Brick By Brick set-up at the time to Scrutiny Committee, but with hindsight it

is clear to Interviewee 19 that there was no one in the Cabinet or on ELT who had the skills or experience in successful commercial development to ensure the Cabinet would appoint a non-Executive Director to the Board who would be able to influence the company's direction and bring back to the Council any concerns about what was going wrong.

- 12.29 Interviewee 13 (a former and/or current member of the Cabinet or Committee Chair) said that the biggest shock and the biggest impact had been the Council's relationship with Brick By Brick. Interviewee 13 had found the whole thing unbelievable and this, above all, raised issues of who is accountable for this situation. Two current Council Directors, the S151 Officer/Director of Finance and the Executive Director for Place had both been non-Executive Directors on the Brick By Brick Board. The Board had not demonstrated good financial management or effective governance. For Interviewee 13, this raised questions. What did these two Council officers do about this? What concerns did they raise? For Interviewee 13 this was a whole system failure. The Council simply did not have the necessary expertise and experience of setting up commercial enterprises like this. In Interviewee 13's opinion, the whole thing is unforgivable, council officers should have done much better and the (former) Chief Executive and any other relevant officers should be held to account for this massive failure in governance.
- 12.30 Interviewee 14 (a former and/or current member of the Cabinet or Committee Chair) had been very supportive of the Administration's manifesto commitment to build much more affordable housing in the Borough. There are families in Croydon, including in Interviewee 14's own Ward, that are facing a real housing crisis of temporary accommodation, overcrowding and homelessness, so when Brick By Brick was proposed it made sense to Interviewee 14. Interviewee 14 is aware that other Councils had set up mechanisms for building social housing using funding from the Public Works Loan Board so why not use the same approach in Croydon? Interviewee 14 had not questioned any of this at the time as it had made sense, but maybe Interviewee 14 had not scrutinised the detail of the proposals closely enough and trusted too much the people who were leading on it. Interviewee 14 can see now that the Council was not closely enough involved with this initiative and it should have been more closely monitored and scrutinised. Interviewee 14 can see that Brick By Brick's model of many small projects on multiple sites across the Borough was inherently risky, but Interviewee 14 could not recall anyone raising this. Interviewee 14 did recall that when any questions were raised about Brick By Brick and its performance, members were too quick to defend it because of the political commitment behind it, and there was insufficient discussion and scrutiny when there were further requests for funding and other support.
- 12.31 Interviewee 14 commented that apparently the Council still cannot get the information that it needs from the company and the company seems to be simply dismissive of the Council and its concerns. As the Council previously had a Chief Executive who had a considerable regeneration background Interviewee 14 assumed that she would know better than others whether the company was delivering and whether there were any problems, and the Council had senior Directors sitting on the Board. The reality is that Interviewee 14 did not feel empowered enough to be more inquisitive or challenging at the time. Interviewee 14 now recognises that as politicians they have been too accepting of what they had been told, but in Interviewee 14's opinion, the Council does have highly paid officers who apparently were not being sufficiently challenging and did not do enough scrutiny of Brick By Brick's development programme and its performance as a company. All of these failures of insufficient challenge and scrutiny by both officers and councillors have contributed to the Council being where it is.
- 12.32 Interviewee 24 (a former and/or current member of the Cabinet or Committee Chair) told me that some Cabinet colleagues have felt badly let down by the quality of the legal advice given about the Council's commercial initiatives, and there is serious disquiet about Brick By Brick and its failure to deliver the income stream that was promised. The Council had a current Executive

Director sitting on the Board as a non-Executive Director so why were Brick By Brick's problems not known about much earlier through her involvement with the company?

- 12.33 Interviewee 18 (a former and/or current member of the Cabinet or Committee Chair) told me that the lack of the expected payments of dividends from Brick By Brick this financial year were another reason for the Council's financial difficulties. When Brick By Brick was being set up the agreed approach was that members would not have direct control over the management of the company, and that the Council would instead rely on the senior officers involved to ensure that everything was being properly managed. It now appears that there were serious issues with aspects of the way that Brick By Brick was being run. Interviewee 18 had been particularly concerned to learn that there was no Finance Director employed by the company and that the financial systems appeared to be inadequate. It now appears that the Council did not have the capacity or the expertise in its own financial and other support services to properly oversee or support the development company that the Council had set up. Interviewee 18 finds it particularly disappointing that the Council had non-Executive Directors on the Brick By Brick Board, first the (current) Director of Finance then the (current) Executive Director of Place, who apparently did not see the problems with the company and even if they did, they failed to flag those up to the Council.
- 12.34 Interviewee 40 (a member of the Opposition Group) told me that it had been clear that Brick By Brick was an attempt to provide affordable housing avoiding 'right to buy' and for the Council to have a source of funds to deploy avoiding scrutiny. Interviewee 40 had been sceptical about any real prospect of any dividend to the Council, but Interviewee 40's attempts to get information about Brick By Brick through freedom of information requests were blocked by being told that it was a private company so Interviewee 40 was not entitled to the information – even though the Council was funding the whole thing and providing the land it was building on. Interviewee 40 told me of the regret at not seconding the proposal for the purchase of the Croydon Park Hotel to be sent back to Council when it was called in by the Opposition and a member proposed it should go back to Council. It was clear to Interviewee 40 that the (former) Cabinet member for Finance and Resources was using these initiatives and the promise of future income streams to paper over the cracks. These projected income streams have not materialised sufficient to cover the endemic overspending.
- 12.35 Interviewee 49 (a member of the Executive Leadership Team) said that both Labour administrations since 2014 have had ambitious agendas about investments in assets. A Growth Board was set up to consider the Capital Spending Programme and investment proposals, and the former Cabinet member for Finance and Resources then set up the Asset Board which he chaired and controlled to focus on investments. Interviewee 49 was aware that there has been consistent advice given to both the (former) Executive Director for Resources and S151 Officer and the (current) Executive Director for Place that the Council did not have the resources needed for the level of investment that was being considered, and that the Assets Board needed to be closed down, but neither Executive Director actioned this. The Asset Board initially had an Asset Investment budget of £100m based on borrowing but neither the Croydon Park Hotel nor the Colonnades purchases went through the Asset Board process, (as it was set up after these purchases were made) which has only been used for the purchase of 2 small industrial units. The (former) Cabinet member for Finance and Resources wanted to increase the original Asset Investment Fund by £100m to £200m and this was agreed in the September 2019 Cabinet report, but this additional investment did not happen and the borrowing did not occur. He also wanted to buy properties from Brick By Brick to make its performance look better but again this did not happen. Interviewee 49 has been told that he was very demanding and used to phone and email the (current) S151 Officer all that time including at weekends and evenings. Interviewee 49 personally found both the (former) Cabinet member for Finance and Resources and the (former) Leader intimidating in their conduct. Interviewee 49 had raised concerns about this with both the (former) Chief Executive and

the (current) Executive Director for Resources and Monitoring Officer but to Interviewee 49's knowledge they did not deal with this.

- 12.36 Interviewee 6 (external to the Council) said that the Council's asset acquisition strategy had not been seen as being the saviour to offset the additional resources going into Children's Services and Adult's Services, but more as a way to get some additional income for the Council. It was basically a well-trodden path in the local government sector and Croydon Council was actually quite late in joining the party. The decision-making process for asset acquisition was essentially mirroring the way this was dealt with in other authorities although it has been criticised in the RIPI which suggested there were chaotic governance arrangements. Interviewee 6 said that the purchase of the Croydon Park Hotel was seen as a sound investment at the time as the site had intrinsic development value – and still does - even if the hotel business failed. The investment portfolio is no doubt now struggling to deliver what was promised but that will be the case for every local authority with an investment portfolio given the COVID situation.
- 12.37 Interviewee 21 (a member of the Executive Leadership Team) said that the (former) Chief Executive decided to transfer responsibility for property including oversight of Brick By Brick in respect of its property and land transfers to the (current) Executive Director for Place. Until then all of the arrangements for creating these companies and arranging the loan agreements etc. were dealt with by the (former) Executive Director for Resources and S151 Officer. None of this as far as Interviewee 21 can recall was ever discussed at ELT and it was the Cabinet that had made all the necessary decisions. Interviewee 21 was aware that the (current) Executive Director for Place had been appointed as a non-Executive Director on the Board of Brick By Brick in April 2019 taking over from the (current) Finance Director as there were conflicts of interest given the Finance Director's role as S151 Officer. Interviewee 21 was aware that the (current) Executive Director for Place then tried to sort out the governance arrangements in the relationship between the Council and the company. This led to the creation of the Shareholder Board. External expertise on the commercial aspects of development companies was also sought by the (current) Executive Director for Place and every month before the Board meeting, external advice was provided to the (current) Executive Director for Place to help prepare for the Board meetings so that she could make a full contribution. However, in Interviewee 21's opinion, it soon became clear to the (current) Executive Director for Place that something was not right and she began to be quite concerned as things did not ring true. Interviewee 21 said that concerns were raised with the (former) Chief Executive in July 2020 when it first became clear that the projected income stream from the company would not materialise. A meeting was also held with the (former) Leader and the (former) Deputy Leader to share these concerns and it was agreed that the Council should get legal advice about possible options from Browne Jacobson. Interviewee 21 is aware that the clear advice received was that the Council could not just close down Brick By Brick but there had to be a properly managed exit strategy. When PwC was commissioned to review the Council's companies, Interviewee 21 was aware that the (current) Executive Director for Place had been involved in drafting the initial brief and ensured that the advice that the Council had received previously from Browne Jacobson was built into that brief.
- 12.38 Interviewee 54 (a member of staff) had been involved in the acquisition by the Council of investment assets such as the Croydon Park Hotel. All acquisitions had been in line with the Asset Investment Strategy that was agreed by the Cabinet as part of the Medium Term Finance Strategy, except for the Croydon Park Hotel which was acquired before the Strategy was approved by Cabinet and the Scrutiny and Overview Committee although it was in line with the emerging Strategy. The Investment Strategy was produced based on advice provided by Interviewee 54, CBRE and others. Interviewee 54 said that it is not unusual for local authorities to have a programme of such acquisitions as a significant contribution to the Council's finances and to compensate for the loss of other income. If anything, Croydon has taken this step later than most local authorities. The Cabinet had agreed the Investment Strategy and the level of potential

investment and as part of the recommendations it was agreed that the approval of any purchases under the scheme would be delegated to the (former) Leader and the (former) Cabinet member for Finance and Resources and Cabinet.

- 12.39 These delegated powers were agreed by the Cabinet on the basis that the Council needed to be 'fleet of foot' 'when opportunities occurred and it would be too cumbersome and may well involve significant aborted costs if there had to be any decision-making process other than using delegated powers. So in practice it has been the (former) Leader and the (former) Cabinet member for Finance and Resources who had authorised acquisitions in line with the Investment Strategy, using the £100m budget that was agreed for such purposes based on the recommendations put before them.
- 12.40 Interviewee 54 was always asked for and always provided advice about potential purchases, although occasionally this advice had been overruled. If there was any occasion when Interviewee 54 considered that a proposal to acquire an investment was not in line with the professional assessment then Interviewee 54 would say so and would put that on the record. At the time of the initial acquisitions Interviewee 54 reported directly to the (former) S151 Officer and therefore was fully involved in the discussions and aware of any risks about an acquisition, and the (former) S151 Officer would be made fully aware of Interviewee 54's professional views. On occasion the (former) S151 Officer may have been aware of the bigger corporate picture and that would be discussed and included within the advice to the decision makers.
- 12.41 So far as the Croydon Park Hotel specifically was concerned Interviewee 54 had made it quite clear at the time that the covenant strength was not strong, but that was reflected in the yield and the asset was still value for money as supported by the independent valuation as it had considerable value as a site even if the hotel business failed. Interviewee 54 had generally not had any concerns that professional advice was not respected or was ignored by members, but at the end of the day it is members who take the decision to purchase using their delegated powers based on the information and the advice provided. Once an asset had been acquired, the Cabinet would be informed of any purchase for information and not for decision or endorsement. When the Investment Strategy approved by Cabinet went to Scrutiny and Overview Committee it required any delegated decision to be advised to the Shadow Opposition Member for comment, and that always happened prior to purchase and there was never any objection as far as he is aware. As a further check and balance on acquisition proposals the Asset Board was set up, chaired by the (former) Cabinet member for Finance and Resources with two other Cabinet members and representatives of ELT as members of the Board. Under this arrangement any proposal for investment acquisitions were reported to the Asset Board but the (former) Chief Executive and the (current) Executive Director for Place had to agree to any investment proposal before it was considered by the Asset Board. So, both the (former) Chief Executive and the (current) Executive Director of Place were fully aware of all proposals to acquire but Interviewee 54 is not aware that any acquisition proposals were discussed or considered by the full ELT.
- 12.42 Interviewee 54 is not aware that the (former) Chief Executive ever stopped or obstructed officers giving necessary advice to members about investment acquisitions. Most of these acquisitions were the subject of very tight timelines and opportunities would have been missed and abortive costs would have been involved if the decision making process was not based on the use of delegated powers. Interviewee 54 is still confident that the purchase of the Colonnades was a good investment decision for the Council as, despite what is being said, it is making money for the Council - £1.9m in the last two years. The Croydon Park Hotel purchase was value for money at the time because of the intrinsic value of a city centre site next to a major rail station. Although Croydon adopted an investment strategy later than many authorities, Interviewee 54's personal view is that the Investment Strategy was a bit overambitious and the original proposal made 5-6 years earlier by Interviewee 54 was for a £20m fund.

- 12.43 So far, the Council has committed around £90m in investments, but many potential assets have been looked at and rejected. The approach has always been to acquire assets that are adjacent to other Croydon-owned land or have redevelopment potential as is the case with the Croydon Park Hotel and Colonnades. Interviewee 54 did have some involvement in the Brick By Brick initiative although as this is more housing oriented the involvement had largely been in the valuation of sites, and in their purchase or disposal. More recently Interviewee 54 had become involved in a wider consideration of the development projects and governance. Interviewee 54's own view of Brick By Brick is that it was a sound idea in principle with significant potential community benefits but that it was overambitious. It would have been beneficial to have someone representing the Council to sit on the Brick By Brick Board as a non-Executive Director who had significant residential development experience and expertise, but at the time there was no one in the Council with those qualities. Interviewee 54 also considers that given the scale of the project the Council did not appropriately resource this project internally to ensure that there was good governance.
- 12.44 Interviewee 43 (external to the Council) said that the (former) Cabinet member for Finance and Resources had been very much behind the ambitious plans by the administration to invest in properties and businesses. This resulted in a massive over-reliance on projected commercial income, with the associated risks, but the situation was further exacerbated by decisions to buy a hotel and other property such as a shopping mall that were affected significantly by the pandemic, which resulted in a significant increase in risk and financial losses. Interviewee 43 said that the necessary capacity to manage the risks had not been created. In Interviewee 43's opinion, questions have to be asked about the competence both of senior members of the administration and those officers who advised them. In Interviewee 43's opinion the Council has seriously mismanaged its relationship with Brick By Brick and there was no real governance which was only realised when the Brick By Brick Chief Executive asked for a pay rise and there was no process to deal with this. This was a company created by the Council that was given £200 million public money which has delivered no income for the Council and which ran out of money a couple of years later. In Interviewee 43's view this situation is totally inexcusable. The (current) Executive Director of Place, the (current) S151 Officer and the (current) Monitoring Officer all had responsibility to ensure that Brick By Brick was properly constituted, governed and managed, but it seems in Interviewee 43's opinion that this was a combination of individuals who failed to see and understand the serious issues at the time. Council officers who had little or no experience in managing commercial risk on a large scale were thrown in at the deep end at Croydon, and were expected to deal with issues that in the view of Interviewee 43 were beyond their competency.
- 12.45 Interviewee 44 (a member of staff) had quickly realised that the governance arrangements for Brick By Brick were inadequate. It had an independent Chair with a couple of Croydon officers on the Board and not much more. It appeared to Interviewee 44 that there had been no scrutiny, no budget monitoring and no risk assessment being done. What was of particular concern was that Brick By Brick senior managers seemed to have direct access to former leading Council members without the need to go through the Croydon officer structure – this is totally inappropriate and simply wrong. It is poor governance and undermines the line management structures.
- 12.46 Interviewee 44 had been excited to be asked to work for Croydon given its declared ambitious agenda for social housing but Interviewee 44 soon discovered that in reality what had been set up as Brick By Brick was a company focused on delivering private housing for sale and for rent. There were regular demands from the company for more and more money and former senior elected members were backing these demands. The company had serious financial problems and it seemed to Interviewee 44 that it believed that the way out of it was just to borrow more and more - this is totally the wrong thing to do either at a personal or a company level. Brick By Brick was perceived very negatively across many parts of the Council and by some sections of the community. On wider commercial activities, during late spring 2020, Interviewee 44 had been

concerned about the apparent desire to continue to seek to purchase more investments, despite the fact that the financial problems were intensifying and the pandemic was worsening.

12.47 In simple terms there was a complete lack of commercial understanding on the part of some former leading elected members. A good example of this, based on observations, was the decision to buy a hotel during 2018. During the pandemic, the hotel fell into administration and as a result the Council lost its commercial rental income from it that was in excess of £1 million per year. In hindsight, it seems to Interviewee 44 to have been a questionable investment because the Council may have paid too much for the hotel. Whilst the hotel has obvious development potential, the Council has limited means to exploit that potential and in reality the hotel has caused further strain on the Council's finances. In Interviewee 44's view, the intention of an investment-led approach was a good and noble ambition. However, in Interviewee 44's professional opinion, the Council's lack of skills, competencies and commercial acumen led to its failure to deliver its strategy successfully. The lack of commercial appraisals, detailed market evaluations and overall treasury management and financial controls have led to the wider financial crisis it now faces. Some might suggest that these investments have turned sour because of bad luck, the pandemic or the economic cycle and of course in the view of Interviewee 44, these may well have been contributory factors. Had the Council had a more robust approach to its commercial activities to Brick By Brick and to the wider growth strategy then maybe it would have been more financially resilient than has proven to be the case.

12.48 Interviewee 44's conclusion is that governance arrangements need to be strengthened across the Boards of the group companies and within the Council, so that there is a much stricter control environment within agreed parameters and a culture of openness and transparency. Interviewee 44's view is that the Council needs to divest itself of some of the assets it has acquired and all disposals should be assessed through a robust asset management plan. Interviewee 44 believes that the Council in future should focus on affordable housing being provided through the HRA.

12.49 The focus of Interviewee 38 (a member of staff) had been on the commercial initiatives by the Council. Brick By Brick and other commercial ventures have clearly not been the success they were hoped to be. Interviewee 38 said that there has been a pattern of the Council launching new initiatives then not properly bedding them in before moving on to the next new initiative. Interviewee 38 considers that the Council never seems to put the right structures and processes around these initiatives to ensure their success, and has not invested in building capacity and expertise in commercial matters to ensure these commercial ventures work properly.

12.50 Interviewee 46 (external to the Council) said that to their knowledge any challenges or questions about Brick By Brick had been rebuffed by the (former) Chief Executive and the (former) Cabinet member for Finance and Resources. There was no transparency or accountability in the way the company was being run even though the Council had first the (current) Director of Finance then the (current) Executive Director of Place as non-Executive Directors on the Board. This is why the (current) Director of Finance needed a Deputy so that she could step away from the day to day stuff and look at the bigger picture including the way Brick By Brick was performing. This was further exacerbated as her line manager did not have a finance background so could not support the (current) Director of Finance effectively even if she had wanted to.

12.51 The Rapid Review Team concluded that:

*'Brick by Brick was set up as a wholly owned company of the Council. Its objective is to bring about housing growth in the Borough. The Council has funded the company through its Revolving Investment Fund which borrows money at low rates and lends on to Brick by Brick (and others) at commercial rates. The Council expected to generate surpluses from these transactions and to receive dividends.'*

*Although to date it appears that Brick by Brick has made little progress despite loans of over £200m from the Council, since neither loan repayments nor dividends have yet been received. It is believed that a considerable number of units could now either be ready for sale or close to being ready. The values of these assets need to be determined as they are currently unclear. Were Brick by Brick not to receive further funding, this would exacerbate the Company's losses, although the CEO of Brick by Brick believes that they can obtain outside funding.*

*Under one proposed scheme, the Croydon Park Hotel will need further funding of approximately £1m to be re-purposed as a provider of Emergency Temporary Accommodation. This is still being examined to ensure it is safe and viable. The Colonnades development does not appear to need further funding.*

*The Council's assessment of the performance of Brick by Brick has changed dramatically over the last few months, with a realisation that forecast interest payments and dividends would not be realised. The PWC review of strategic options is currently being considered by the Council. It is clear that the Council cannot simply close or walk away from Brick by Brick. It is our view that the Council has mismanaged Brick by Brick but that does not invalidate the business concept.'*

and

*'It is still early days; however, the Council appears to understand the severity of the situation it has got itself into as reflected by the issuance of the Section 114 notice. The Council officers are taking a more direct role in overseeing the various investments and are putting together business cases for review. The Council now understands that it needs to put Directors onto the Board (2 Directors were appointed at Cabinet on 25th November) and a Finance Director into Brick by Brick to take financial control of the company and it has stopped automatically funding the loans on demand as was the case previously. More information is needed on the financial situation of Brick by Brick before an opinion on the likely success of the investment is given.'*

and

*'The Council appears to have taken on board the need to de-risk the Council's commercial and investment strategy. This is particularly evident in its response to the Croydon Park Hotel and the Colonnades, with a business case having been put together for the former and which is currently under review. The response to Brick by Brick is evolving as the level of financial information from the company is currently inadequate and the future plan depends on a clearer view of the current position.*

*It is likely given the findings of the PIR report and the PWC review of companies that the Council will be encouraged to rationalise its investments to avoid further losses. However, we would recommend against premature divestment before additional information is gathered as to the value of the assets that are both held for sale and currently in development with Brick by Brick. The Council is unanimous in its view that the oversight and management of the commercial and investment risk in the past was inadequate.*

*The on-going supervision which did take place of Brick by Brick focused on development and planning issues and did not appear to involve much or any*

*financial discussion, exacerbated by the fact that the Company did not prepare financial cash flows for the meetings and did not replace its Finance Director when he left. This needs to be remedied urgently.*

*In the case of the Croydon Park Hotel a business case has been put forward for temporary accommodation use, which may neutralise the cash flow drain.*

*The Colonnades Development appears to have so far withstood the challenges of a C-19 lockdown and seems to be performing adequately given the circumstances.*

*In the past there was no one within the Council tasked with overseeing the contractual loan documents made with investment companies and this needs to change. It is clear from recent actions that the Council has now recognised that it had contributed to some of the delays in Brick by Brick's business plan and it needs to allocate appropriate responsibility internally and improve the oversight as well as the communication with the Company.'*

## The culture of the organisation

- 13.1 The LGA Review of the Resources Directorate was focused on the culture of that part of the Council but many of the Review's findings can be applied across the Council. Many interviewees pointed out that staff are tired and worn down by recent events and daunted by how much effort will be needed to put things right. Some said the atmosphere under the (former) Chief Executive was very difficult and it is perhaps understandable that people have retreated into their own Teams, doing what they have always done and have avoided substantial change for fear of the effort it will take, or the scrutiny it will bring. Some people talked about a 'them and us' culture rather than a culture of 'One Organisation'. There was no sense that colleagues from other parts of the Council were customers; indeed, some managers from other parts of the Council said they felt strongly that the Resources Directorate behaves as if it is doing them a favour rather than treating them as customers.
- 13.2 Some interviewees talked about the Council being inwardly focused and not looking outwards enough for ideas, networking, etc. The Directorate is also impacted by a wider cultural issue which affects the whole council. It is perhaps best described to me as: *'Shiny new ideas which sink without trace'*. There is a strong sense of initiatives being developed without reference to strategic priorities, without full analysis of the impact in terms of cost and people and, crucially, without an honest conversation about what might need to stop being done to ensure the new initiative had the best prospect of success. This was not explored in detail but was said by enough interviewees to suggest it has more than a kernel of truth to it. The innovative and creative thinking that generates these new ideas is a strength that should be nurtured but there are important questions about what cultural and operational context the Council needs, to give those ideas the best possible chance of success. A treadmill of failed initiatives is demoralising and distracts valuable resources from existing, important work. The conversations elicited an overwhelming sense of the Resources Directorate running to stand still, firefighting on many fronts and unable to take time to pause, reflect, re-energise and move forward. Someone said that *'Croydon is like a garden that has become overgrown. It now resembles a jungle that can feel too big and daunting to begin to tackle'*. It was interesting to hear from staff who had come from other Councils and who had been taken aback at the lack of clear processes, a rigorous performance culture and accountability, with one person suggesting it had felt a bit like *'the Wild West'*. Indeed, the messages about the lack of a performance culture, an industry of bureaucracy, the absence of accurate and relevant data and systems and processes that are clunky, non-intuitive and unaligned was consistent in all the conversations. It is recognised that efforts have been made to address some of the issues (e.g. the accessibility of the 'My Manager' system, the need to raise Purchase Orders, etc.) but these felt like pin-pricks in trying to deal with the huge cultural and logistical challenge of fundamentally changing how the Council carries out its corporate activities. The Review concluded that the Council should define what it means to be a 'good manager' in Croydon. This would then need to be supported by a management development programme for managers with a particular focus on people management, performance management and project management skills.
- 13.3 Interviewee 55 (a member of staff) told me that Croydon Council is strongly dominated by elected members, and members interfere with operational matters even, most probably apocryphally, at the level of who does or does not get a parking ticket. To this officer, it seems that everyone knows that this is the way Croydon Council works and that you have to be a 'yes' person if you want to progress, and that is the way to work your way up the officer structure.
- 13.4 Interviewee 25 (a member of the Executive Leadership Team) said that there are a number of complex issues in the past that have incrementally developed over the last few years. The adverse Ofsted report was a very significant event and resulted in a huge response by the Council to try to fix Children's Services and this really exacerbated the Council's financial problems. Interviewee 25 said that members clearly felt that officers had not fully shared the extent of the Children's

Services problems and that is when mistrust began to show itself. There were other things going on at the same time around the implementation of the administration's ambitious agenda so Brick By Brick and other companies were set up to create housing and fresh income streams to compensate for the loss of other income. Over the years, in Interviewee 25's opinion, resources were taken out of the Finance Department which meant that there were less Finance staff to assist and advise Directorates. The Council's reserves were running low over many years and then COVID hit and resulted in further loss of income and increased expenditure. All of these contributed to Grant Thornton's view in Interviewee 25's opinion that there had been 'collective corporate blindness'.

13.5 Interviewee 27 (a member of the Executive Leadership Team) had been asked by the (former) S151 Officer to look at the governance arrangements for Brick By Brick as they were aware that Interviewee 27 had sorted out the governance arrangements for a large housing project at a previous authority. When the (former) Chief Executive found out about this she was not at all happy and had told Interviewee 27 to stick to doing their day job. Interviewee 27 said that the (former) Chief Executive was not at all committed to cross-Directorate working or even collaboration between Directors and Directorates, and when Interviewee 27 had raised new ideas at ELT and the (former) Chief Executive had thrown them out or dismissed them some ELT members were supportive but most stayed silent. Interviewee 27 had never before been shouted at by a Chief Executive, but the (former) Chief Executive had shouted at Interviewee 27 in the open plan office. Interviewee 27 said that the (former) Chief Executive was a big personality and could be very impressive and motivating for staff and partners.

Interviewee 27 had told the (former) Chief Executive that the culture of the organisation needed to change and that as Chief Executive she needed to lead this change, but the (former) Chief Executive was not at all impressed with what Interviewee 27 had said.

13.6 Interviewee 28 (a member of the Executive Leadership Team) believes that Croydon Council forgot that it was a local authority with the core business of delivering services in a Borough that has a lot of need. It relished a role as a developer focused on regeneration and lots of shiny new things in the town centre - although many of these initiatives are actually only half finished. The Council seemed to regard essential core services as peripheral to its core task of acting as a developer. There has been no systematic financial, risk management or performance management across the organisation, although there are some excellent systems and some very competent and committed staff in those functions. Interviewee 28 said that it seems that in the past Executive Directors and Directors were given the choice whether or not to use these systems and only parts of Children's Services and the Resources Directorate chose to do so and others just carried on without any risk management or performance management. This appears to also be the case with financial management where every Directorate takes a different approach. Interviewee 28 is clear that as a key part of its recovery Croydon needs to get back to being a local authority focused on the effective delivery of its core services, and to stop acting like a FTSE 100 city company. The Council's lavish corporate headquarters in the town centre is a clear example of how it forgot what it was really there for. The organisation has lost its way and it will take an enormous effort to get it back on track and change the culture, but with a new political leadership and with the right Chief Executive and Executive Leadership Team it is achievable.

13.7 Interviewee 32 (a member of staff) said that Croydon Council has for a long time been preoccupied with demonstrating that Croydon is best at everything and that seems to predate the (former) Chief Executive. Based on Interviewee 28's experience as a Director with Croydon Council there seems to be no professional curiosity amongst staff, no interest in best practice elsewhere or willingness to learn from the experience of other authorities. This means they have no benchmarks to judge whether they are in fact the best at what they do. Interviewee 28 has found this lack of sector

interest and curiosity very odd. Some staff seem to be convinced that they are the best performing in London with no real evidence to support this view but just will not accept that they may not be the best.

- 13.8 Interviewee 44 (a member of staff) said that what the Council needs is:
- a fundamental change and improvement in all aspects of its leadership and culture
  - a restructuring of the current senior management structure. It is over elaborate and very expensive, it should be flatter and the various housing functions should be consolidated under a single Housing Directorate
  - to appoint a commercial Director to play a major role in ensuring all commercial activities are properly managed within the limits of the emerging strategy and Croydon Renewal Plan; and
  - re-building reserves in both the General Fund and the HRA.
- 13.9 Interviewee 36 (a member of staff) said that the political leadership of the Council, the (former) Cabinet, the (former) Chief Executive and the (current) ELT, appeared to be predominantly focused and only interested in three key areas. First, politics (*'we only want good news stories'*); secondly, initiatives in the external environment such as Brick By Brick; and thirdly, the drive to get the next Ofsted judgement to 'good'. Everything else the Council did was seen as peripheral and did not fit the narrative, including good governance and effective risk management. Interviewee 36 considers that the Council does have good frameworks for risk management but the culture did not involve the active use of those frameworks. In practice, the culture that is established at the top of the organisation works its way down into the depths of the organisation so what is being witnessed now is officers at quite junior levels modelling themselves still on the behaviour of the previous Council political and managerial leadership.
- 13.10 So, many officers are trying to circumvent the S114 Notice and trying to get round the Financial Control Panel that has been set up as part of that Notice. They seem just not to understand or accept that it is their problem rather than someone else's. Because they have observed that very senior officers and members have not been held to account for their behaviour they believe that they can find a way to get round the rules and not face any consequences. This is a very flawed culture for any organisation but particularly for a local authority, and it will take a lot of effort and time to change the culture that was established and has become deeply embedded under the (former) Chief Executive's leadership, supported by senior members. Interviewee 36's conclusion is that there has been a perfect storm at Croydon based largely on the arrogance of the Council's previous leadership (the (former) Chief Executive and certain (former) Cabinet members) combined with their need/desire to leave a personal legacy providing the basis to enhance their future political or managerial careers. This was based on the successful delivery of major projects such as an impressive investment portfolio, lots of new affordable housing and a 'shiny' new town centre.
- 13.11 For Interviewee 36 the reality was and still is that the Council has never had the necessary resources to deliver its ambitious agenda and the likelihood of financial collapse increased rapidly without recognition of and management of the risk. When those involved in the delivery of the risk management process tried to explain that this was going to go seriously wrong, their advice/concern was ignored. The Head of Internal Audit Report and the Annual Governance Statement are documents that tried to encapsulate all of the dangers that the Council was facing but upon presentation to ELT the blue touch paper was lit and the fireworks started. Interviewee 36 personally believes that the (current) ELT has really failed the organisation by not challenging the (former) Chief Executive and providing the necessary checks and balances for an over

ambitious Leadership that was never going to be able to deliver the legacy it wanted. It is the case that the (former) Chief Executive was a challenging character to work for but it must also be recognised that the ELT did have the mechanisms and the critical mass to challenge, stand their ground and they simply failed at this and must also be held responsible.

- 13.12 Interviewee 30 (a member of staff) said that Croydon Council faces massive challenges and the Improvement Plan that has been agreed by the Council will be very difficult to implement in a short timescale particularly given the situation with COVID. Croydon needs new and better political and officer leadership as a prerequisite for the Improvement Plan and for Croydon's recovery to succeed.
- 13.13 Interviewee 10 (a former and/or current member of the Cabinet or Committee Chair) said that the first realisation about the external auditors' adverse VFM finding was when a former councillor asked Interviewee 10 about the report that was submitted to General Purposes and Audit Committee in October 2019. When Interviewee 10 reflected on this question, Interviewee 10 realised that this had been reported back to Cabinet by the (former) Cabinet member for Finance and Resources although the way it had been handled at the time played down the seriousness of this. The external auditors have since attended political Cabinet and said that they could not understand why members had been so passive given the seriousness of the situation with few such findings ever issued – and that normally elected members in other Councils are 'jumping up and down' to stop an adverse VFM finding but that Croydon members had been very passive. Interviewee 10 now feels very frustrated that the curiosity and the need to know was not satisfactorily dealt with at the time, and is disappointed that they should have pushed harder but did not. The fact is that everyone does want to do their best and there is now a sense of shame and embarrassment about what happened and what was allowed to happen. Interviewee 10 did try to know what the situation really was at the time but accepts that it would have been right to try even harder.
- 13.14 Interviewee 12 (a former and/or current member of the Cabinet or Committee Chair) said that there is nothing in any of the reports - the RIPI or the PWC Report - that is untrue or that misses a point and that the situation that the Council is in cannot be simply explained away. Interviewee 12 told me that how the Council got to this situation is a mixture of the failures by both elected members and senior officers, individually and collectively, to do the right things and to take the correct actions and this has resulted in the errors and mistakes that have placed the Council in the current situation.
- 13.15 Interviewee 14 (a former and/or current member of the Cabinet or Committee Chair) said that when Croydon's serious financial problems became more and more obvious Interviewee 14 had asked a senior colleague at the GLA for advice about what should be done. The response was that Croydon had always been well-known for 'chasing unicorns' and that it was known that the (former) Chief Executive was very much seen as part of that culture in her previous role in Croydon and as the (former) Chief Executive. So Interviewee 14 now believes that she was the wrong choice as Chief Executive and the Council should have appointed a 'nuts and bolts' Chief Executive who would have focused on managing things well and stopping inappropriate and unaffordable expenditure. Interviewee 14 is reassured that the (Interim) Chief Executive appears very different to her predecessor, who it seems appointed people to senior positions who would not question or challenge her but who did not necessarily appear to have the experience and expertise to effectively carry out their roles.
- 13.16 Interviewee 14 did not have much direct contact with the (former) Chief Executive. However, a personal illustration of her resistance to challenge was at a meeting Interviewee 14 had attended which was discussing the 15% cost reduction programme. Interviewee 14 had recounted their own experience of similar exercises and the lessons learned, particularly about the need to be aware of

the potential equalities impact. Interviewee 14 was trying to be helpful, not provocative or over assertive and was astonished a few days later that the (former) Chief Executive sent a note to the Cabinet member complaining about Interviewee 14's comments and the degree of challenge Interviewee 14 had given. Interviewee 14 had been really surprised at this not least given the other, more pressing challenges facing the Council, but was then even more surprised when the ELT member who had been at the meeting said they felt the same way. Interviewee 14's strong suspicion is that the (former) Chief Executive may have pressured that ELT member into supporting her and the way she had escalated it to the Cabinet member.

- 13.17 Interviewee 56 (a former and/or current member of the Cabinet or Committee Chair) said that it is now possible to see how the Council has been performing over a long period. Interviewee 56 believes that everything that has happened relates back to the culture of the organisation and now that Interviewee 56 is inside the organisation the view is even clearer. The former Cabinet had been in place for too long and was dominated by a few strong colleagues. Those former Cabinet members who were not part of the Leader's team kept their heads down and focused on their own portfolios. Interviewee 56 does not believe that people like Interviewee 56 would have had a voice in that Cabinet and Interviewee 56 would never have survived in that culture because people like Interviewee 56 would not have kept their head down and would not have kept quiet. Some of the councillors outside of the Cabinet had asked questions about what was happening and had raised concerns within the Labour Group but did not get a useful response to those questions and their concerns were ignored. Interviewee 56 is surprised now how little was understood about what was going on and it is really only because Interviewee 56 now has a mentor, a councillor from another local authority, that things can be seen more clearly. It is clear to Interviewee 56 that there has not been an effective working relationship between members and officers for some time and that there is now a demoralised workforce facing more redundancies and cuts to services. The Council's relationships with the wider Croydon community are very poor and the Council's communication and explanations to the community about what has happened are negligible so *Inside Croydon* has filled the communication vacuum.
- 13.18 Interviewee 23 (a former and/or current member of the Cabinet or Committee Chair) said that Croydon is now in desperate need of rebranding. The past obsession by the Council with town centre development has to be challenged and replaced with a vision for what Croydon can successfully be in the future. The only way that Croydon Council will successfully emerge from its current desperate situation is to have the right political and managerial leadership with the right governance and the right corporate support systems in place.
- 13.19 Interviewee 41 (a former and/or current member of the Cabinet or Committee Chair) told me that part of the problem in recent years has been the sense of paranoia resulting from social media and sites like *Inside Croydon*. These have contributed to the deteriorating officer/member relationships and members have been pushed into an over-defensive position. This has been particularly the case in respect of the Westfield development that was a big flagship project that has suffered greatly as a result of huge changes in shopping habits, Brexit and the pandemic. Interviewee 56 said that there has been a lot of blame around about this – it is all said to be the fault of the Council, of the (former) Chief Executive and so on – and this contributed significantly to the atmosphere of blame and mistrust. Interviewee 56 hopes that the Council is now at a watershed and that the Council can now move forward and sort out its many problems in a timely way.
- 13.20 Interviewee 56 (a former and/or current member of the Cabinet or Committee Chair) said that the (former) Leader had been elected as Leader by the Group as a unifying Leader, as the previous Leader had acted in a high-handed and sometime intimidating manner. He then appointed a Chief Executive who had a particular commitment to extensive outsourcing as a way to tackle what were already serious financial problems at Croydon Council – but this did not work. When he left and the (former) Chief Executive was promoted from her Executive Director of Place role in

Interviewee 56's view she had followed the same approach of accepting things that the (former) Leader wanted to happen, but had also tried to change the organisation in a number of ways that Interviewee 56 had personally supported - such as promoting a 'localities' dimension to the Council's work and trying to reduce silo working - but it is Interviewee 56's view that the culture did not really change. So in the view of Interviewee 56 the problem with Croydon has been that a succession of strong political leaders have got away with things and compliant senior officers have allowed this to happen. For example, when Croydon decided to sell off an important part of its heritage in 2013 - a valuable ceramics collection - Interviewee 56 had been appalled and had tried to get it 'called in'. Interviewee 56 had discussed this with the then Monitoring Officer who had told Interviewee 56 that because the proposal was about selling something rather than buying something it could not be called in. That had been the wrong advice, but as this was the advice of the Monitoring Officer there was nothing Interviewee 56 could do about it so the sale went ahead. Interviewee 56 said that this is an example of the cultural problem of politicians being allowed to get away with, a problem that goes back at least 10 years.

- 13.21 Interviewee 40 (a member of the Opposition Group) said that the narrative has quickly developed that the Council's current dire situation is all the (former) Chief Executive's fault, that she has gone so everything is all right now - but clearly that is not the case. Interviewee 40 had observed was that the (former) Chief Executive certainly did not like being challenged and questioned, but Interviewee 40 did not want to paint her as the sole culprit. Interviewee 40 said that the organisational culture that the (former) Chief Executive was a part of and did not act to change, was all about the prevention of information being made available that might point to poor performance by the Council. Interviewee 40's requests for information/documents have always been met by passive/aggressive behaviour – *'you don't need it, you are not entitled to it, etc'*.
- 13.22 Interviewee 40 said that Cabinet members and Executive Directors have long been party to a culture that prevents elected members and others getting the information they need, and in particular the Council's (current) Monitoring Officer and the (current) S151 Officer have statutory responsibilities to ensure that the Council acts properly but in Interviewee 40's opinion they have failed to meet their statutory responsibilities. In the view of Interviewee 40 it appears that they were both appointed not for their competencies but because they would be complicit and compliant with the way the Council was being run.
- 13.23 Interviewee 40 does accept the explanation that they may have been bullied by the (former) Chief Executive or the (former) Cabinet member for Finance and Resources into not doing their jobs properly - but they should have acted properly despite what they were being told to do. The (former) Cabinet member for Finance and Resources was not even a member of General Purposes and Audit Committee or the Scrutiny and Overview Committee yet he always turned up at meetings and intervened before the (current) S151 Officer or other officers could answer questions, blocking off professional advice and information being provided. That was totally inappropriate, but not enough action was taken to stop it. The Scrutiny and Overview Committee should take some of the blame here for not referring some decisions back to full Council. Interviewee 40 had been really frustrated because Interviewee 40 had assumed that the job of officers was to help councillors get what they need and not to put obstacles in their way.
- 13.24 Interviewee 57 (a member of the Executive Leadership Team) told me that there is a need to rebuild trust both inside and outside the Council and there must be no perception or reality that there is any cover-up. The scale of the challenge is indeed enormous and there needs to be a wholesale cultural change where all those who are involved in policy development and decision-making – officers and members - accept their responsibility and properly risk assess, act within the law and to ensure that everything they do is in line with the Council's policies, Regulations and based on best practice. This challenge will be made even more difficult by the continuing COVID situation and the consequential inability to bring people together literally to embed the necessary cultural

change. Interviewee 57 drew to my attention that the Interim Chief Executive has recently proposed a new senior management structure which includes an emphasis on the organisational development resource of the Council to support the delivery of the Croydon Renewal Improvement Plan. This should help to reinforce the importance of changing the culture of the Council as much as its systems and processes and will help to address the deeply held views of a number of staff about discriminatory practice and a bullying culture.

13.25 Interviewee 50 (a member of staff) said that there is a lot of nepotism at the Council and a lot of people being well rewarded for their failure. It is clear to Interviewee 50 that there has been a lot of financial mismanagement but no action has been taken. It seems to Interviewee 50 that some people are appointed to the most senior positions and then they are told to stay silent and not raise any issues or concerns. There has been a bullying culture at the Council that is denied if people raise any concerns. Few grievances are ever upheld and things like that are just swept under the carpet. People are often set up to fail and then not supported when things go wrong with their jobs.

13.26 Interviewee 50 told me that trade union members want to see the people responsible for the Council's situation properly held to account for their failings and subject to exactly the same procedures as applies to ordinary employees of the Council. It is the case that 'heads must roll' and must be seen to roll in order to give Council staff the trust and confidence that things are going to improve for the future. People in the community also want to see that action is being taken against those responsible as they are the ones that are going to suffer as a result of the inevitable cuts in services. Interviewee 50 had a very clear message for the (Interim) Chief Executive: continue to be honest and transparent, and change the organisational culture making sure that the systems are appropriate and fit for purpose as well as properly used. COVID allowing, walk the floor when you can, and be visible to the staff who are feeling really bruised and badly served by your predecessor. The (Interim) Chief Executive and the new Leader of the Council need to reach out to the community which is feeling really let down. Interviewee 50 is proud of Croydon and wants above all for the Council and the Borough to be successful.

13.27 Interviewee 48 (external to the Council) is reasonably confident that things are now moving in the right direction with an acknowledgement from the new Leader and the (Interim) Chief Executive that drastic action is required. However, there is still real concern about how deeply and broadly embedded that understanding is, and it is clear that there needs to be a comprehensive organisation-wide change of culture to deliver and embed the many changes set out in the action plan. The organisational challenge for the (Interim) Chief Executive is huge and there are other issues that need to be addressed alongside those detailed in the action plan. There is real concern about the organisation's capacity to do all that is required at pace.

13.28 The Rapid Review Report commented that:

*'With regard to the culture of the organisation, the officers and members we met were happy to work and serve the borough, but we heard recurrent references to "a controlling culture" in the past which it was claimed emanated from the Council's former Leadership'.*

## Conclusions and recommendations

- 14.1 This report is a faithful record of a wide range of views about ‘*how the Council came to this point*’ from the perspective of a number of the Council’s elected members (from both political parties), many of its senior managers and staff, as well as some external partners.
- 14.2 A total of 64 individuals gave their professional views, their personal observations, beliefs and comments to me during my investigation. I found these views, observations, beliefs and comments to be genuinely held and sincerely expressed. And when drawn together they describe an overall and compelling outline portrait of how Croydon arrived at its current position. I accept that not all comments will be, in and of themselves, wholly correct. Moreover, I accept that there may well be other perspectives that could help make the portrait more complete. And it needs to be made clear again that this report does not reflect the formal views of the London Borough of Croydon as to what took place. It is not a statement of fact but the separate narratives of 64 individuals about what they saw taking place that led the Council to be in the situation in which it now finds itself.
- 14.3 Of course, individual perspectives will always be subjectively based, and by definition they can only offer partial pictures of some deeper and wider truths. But when these comments are shorn of any rhetorical excesses, when they are triangulated and then synthesised, a picture of organisational dysfunction at the most senior level in the Council emerges. This dysfunction seems to stem from poor governance by the former political leadership of the Council and by correspondingly poor managerial leadership from the Council’s most senior officers. It would appear that those with the biggest responsibilities and with statutory duties let the organisation down.
- 14.4 The Council is a multi-functional and multi-purpose organisation. It is a vehicle for community self-governance and a local platform for delivering an array of public functions and services in partnership with other public agencies, and with a large variety of supply partners. A healthily functioning Council is critical for the quality of life and life-chances of so many of Croydon’s residents. As a public service organisation the Council needs to be robust, agile and financially sustainable. This is especially required given the breadth and critical importance of its functional responsibilities to Croydon’s residents and communities. But by narrowing its focus and attention to a small number of commercial, regeneration and other goals the Council appears to have effectively ‘blinkered’ itself to its wider responsibilities. And by seeming to encourage overly positive news while appearing to avoid unwelcome and inconvenient feedback, including feedback that was grounded in the reality of service outcomes and staff experience, it appears that the Council’s political and managerial leadership failed to focus on the real budgetary crisis that was enveloping them. ‘*Collective corporate blindness*’ was the term used by the Council’s external auditors, and the majority of people that I interviewed agreed with that description.
- 14.5 Whilst the Council’s governance looks fit for purpose from a distance, these interviews revealed a highly dysfunctional organisation characterised by a culture of poor decision-making and conduct of some of the Council’s most senior managers. This is evidenced, among other things, in the belief that needing to be ‘fleet of foot’ meant that public money could be spent without due regard to public decision-making and internal managerial and financial controls. This included, again among other things, seemingly no formal officer governance controls being in place in respect of loan agreements in excess of £200m; the apparent toleration of non-compliance and Directorate overspending; and the apparent failure formally to advise members and share information appropriately.
- 14.6 Like all other local authorities, Croydon has found its budget and its organisation bent out of shape by the COVID-19 pandemic and the range of ensuing suppression measures. However, its overall budget and investment profile was not as soundly based as other authorities prior to the COVID-

19 crisis. This has meant that, despite the heroic efforts of so many staff to sustain key services and deliver new services, the Council was not financially robust enough to weather the challenges of the past year.

- 14.7 All local authorities have agreed structures for accountability and responsibility set out specifically within their Constitutions. These codify information flows, accountabilities (both ‘to’ and ‘for’), responsibilities, and especially the relations between members and officers. But the majority of people within the Council, and across the wider community, rarely examine these Codes. Instead everyone experiences (or hears indirectly of) the behaviour and conduct of those who are elected to lead the Council, and those professional managers appointed to advise those leaders and implement their decisions.
- 14.8 Taken together, these 64 interviews indicate a significant level of confusion over member and officer roles. What happened in Croydon seems to have been an assertion of power by certain elected members to control the operational domain of the Council, and an apparent acquiescence to that on the part of the Council’s most senior officers. This resulted in an apparent failure to ensure effective governance of decisions over public money and the apparent failure to set in place appropriate accountability mechanisms for delivery.
- 14.9 There is a fine line between organisational success and failure - whether in the corporate or in the public sector. Failure usually results from system failings or the shortcomings of individuals in performing their roles - or more usually from a mix of the two. In local government, failure can stem from mismanagement, political hubris or a blend of the two. Organisational controls can be too loose on those things where they should be tighter, or conversely too tight on the very things where they should be looser. For example, being overly relaxed about financial and legal controls while being simultaneously overly controlling on internal staff messages about where things are not going as planned is a recipe for widespread dysfunction.
- 14.10 When implementing policies in local government, failure can stem from less than best advice, less than best decision-making, less than best implementation or a mixture of all three. In many cases, local authorities begin to fail when some of the following traits become obvious in their political and managerial leadership: first, leaders may fail to attend sufficiently to important core priorities; second, they may avoid accountability and fail to confront difficult issues; third, the internal fabric of accountability within their organisations may become opaque and lack clarity; and fourth, leaders may fail to achieve an organisational commitment to act and implement decisions as relationships are corroded by mistrust.
- 14.11 As described in the General Purposes and Audit Committee Annual Report for 2019/20, the Council’s policies and process arrangements are robust and impressive. And the Council’s policy approach to risk management and assurance is good. However, from the Report in the Public Interest, the Strategic Review and PwC report, the Rapid Review report and feedback from those 64 people who were interviewed for this report; a very different picture is presented. Major risks within the Council’s revenue budgets, and in its investment portfolio, appear to have been downplayed in the face of what seemed to have been unbridled optimism and seemingly an almost reckless disregard of the potential adverse consequences of these risks to the achievement of the Council’s core purposes.
- 14.12 The appointment of an Interim Chief Executive and the continuing support from the Local Government Association has provided an impetus for change that has begun to remedy the organisational and management deficiencies described above. But a wholesale redesign of the Council’s management arrangements (and its internal assurance frameworks - including the rigorous adherence to corporate controls on budget management, risks, and service performance - needs to be implemented alongside a reinvigoration of a positive organisational and staff culture

that is based on accountability, openness, inclusiveness, curiosity and learning how to deliver better for Croydon's residents.

- 14.13 The decision of the Majority Party to change the Council's political leadership offers the basis for rectifying previous political governance failings. The Council must now focus on building healthy and effective governance across the Executive and Scrutiny divide as well as across the Council's two political parties. It needs to focus on modelling good behaviour and conduct by members, as well as proper role clarity and respect between officers and members. These actions will help rebuild the trust and confidence in the Council's political and managerial leadership. The Council will also need to start considering how to rebuild its relationship with the people of Croydon.
- 14.14 The Council will only be able to reshape its resource base in a timely and sustainable manner if it can, at pace, establish new and effective management arrangements, promote a positive organisational culture, embed clarity of direction, and foster an open and healthy governance across the political divide where challenge is accepted and encouraged.
- 14.15 The Council needs to turn its policies about being a safe and supportive place in which employees can work into reality. Psychological safety at work is crucial for both shared learning and continuous service improvement. It is not simply a case of being free from bullying, harassment and victimisation but of experiencing positive signs of support for professional learning, as well as care for personal growth.
- 14.16 In addition to seeking an understanding of how the Council has arrived in this situation, I was also tasked with assessing whether the information gathered through this initial investigation raised concerns about individuals that needed to be more formally considered through other processes. In paragraph 6.1 above (in the section on the Executive Leadership Team) the core purpose and roles of the Council's most senior managers was outlined. These management roles are not simply focused on functional nor on professional responsibilities; they also carry responsibilities for the overall corporate management of the Council, ensuring its overall effectiveness in both service delivery and staff leadership.
- 14.17 Those senior officers that are members of the Executive Leadership Team have a different mix of functional management responsibilities and corporate management responsibilities. Three post holders also have statutory responsibilities to the Council: the Head of Paid Service, the Chief Financial Officer (or Section 151 Officer); and the Monitoring Officer. Other post holders on the Executive Leadership Team may have direct management responsibility for functional or service leadership, but nonetheless they are also managerially responsible for ensuring the corporate effectiveness of the Council's overall functions, services and budgets. All members of the Executive Leadership Team are expected to work corporately, with shared responsibilities to ensure the Council's actions are lawful, that there is overall budget control, that actions are taken to limit the impact of resource reductions on front line services, and that the leadership of the Council's staff is conducted within a positive, inclusive and supportive culture.
- 14.18 It is clear from the triangulated strength and weight of opinion that concerns can be raised over the actions, the inactions and the conduct of a number of individuals. These three sets of concerns include: (1) management misjudgements and actions which led to an absence of adequate budgetary controls and mechanisms for evaluating and agreeing asset investments, and so on; (2) failures to advise members properly on the breadth and the escalation of risk which placed the Council's core purposes in jeopardy, alongside systemic management failures of corporate management internal controls; and (3) failure to stop a corrosive top-down culture of, what is commonly described by Interviewees as, over-controlling and bullying. In this final regard the Council's most senior managers are depicted, by Interviewees, as bystanders to the bullying of managers and junior staff by former leading members and the former Chief Executive. I recognise

that this can be a vexed and difficult issue to handle when it involves the leading political and managerial figures in the organisation. But if the Council's most senior management team, itself charged with fostering a diverse and inclusive organisational culture, is seen to stand by rather than to stand up, the whole organisation is adversely affected by what many interviewers described as controlling and often bullying behaviour.

- 14.19 It is therefore recommended that, when this report is presented to the relevant Council body, formal consideration is given to whether the concerns raised in this report warrant further formal proceedings to be commenced in line with the JNC disciplinary procedures. The officers involved will have the opportunity to make representations to members of that Committee as part of its formal consideration whether or not to proceed with any further formal action. The three officers involved are:
- the (current) Executive Director of Resources and Monitoring Officer,
  - the (current) Executive Director for Place, and
  - the (current) Director of Finance, Investment and Risk and S151 Officer.
- 14.20 The investigation has raised concerns about the behaviour of the Executive Leadership Team as a group and its behaviour in response to possible breaches of the Officer Code of Conduct in regard to bullying behaviour. Members are asked to consider what, if any, further action is warranted in regard to these concerns.
- 14.21 It is also recommended that when this report is presented to the relevant Council body, formal consideration is given as to whether there have been any breaches of the Member Code of Conduct and the Protocol on Staff - Councillor Relations, and whether formal action is appropriate in regard to any potential breaches. The members involved are:
- the former Leader of the Council, and
  - the former Cabinet Member for Finance & Resources.
- 14.22 The investigation has raised concerns about the actions and inactions of the former Executive Director of Resources and S151 Officer. This individual is no longer employed by the Council. It is recommended that members consider whether the concerns raised in this initial investigation report warrant a referral to the Conduct and Ethics Committee of the Chartered Institute of Public Finance and Accountability.
- 14.23 The investigation has raised concerns about the actions and inactions of the former Chief Executive who is no longer employed by the Council. It is recommended that members consider a review of the settlement agreement that was signed by the Council with the former Chief Executive and whether the concerns raised in this initial investigation constitute a repudiatory breach of her contract and thus a breach of the terms of the settlement.
- 14.24 Members are also requested to consider referring this initial investigatory report to the Metropolitan Police for assessment of any further action being warranted in regard to the handling of public money and conduct in public office.

## **Appendix 1**

### **Terms of reference for an initial and independent investigation into corporate management actions, organisational systems and environment in response to the Report in the Public Interest:**

*'The Extraordinary Council Meeting of 19<sup>th</sup> November 2020 noted that the Local Government Association (LGA) had been asked to support the Council by facilitating an initial and independent investigation of corporate management actions, organisational systems and environment in response to the Report in the Public Interest. This initial investigation was commissioned by the*

*Interim Chief Executive and will report to her in the first instance.*

1. *The investigation will be conducted by Richard Penn, a Senior Associate with the LGA and a very experienced ex-local authority Chief Executive and investigator. Richard's details are attached at the end of these terms of reference.*
2. *The costs of the investigation will be met from funding provided to the Council by the LGA.*
3. *A number of independent critical reports into the London Borough of Croydon, have recently been published: a Report in the Public Interest, the Strategic review of council companies and other entities and a section 114 notice. These describe what has occurred over the past three years and provide context and detail about the situation the Council is facing and the serious financial position it faces.*
4. *The Council is producing the Croydon Renewal Improvement Plan to tackle this. It is incorporating the recommendations from these reports and others into that Plan. The Council will be held to account for the delivery of the Improvement Plan by both elected Croydon councillors and an independently chaired Improvement Board reporting to MHCLG. The Improvement Plan will also guide the efficient and effective use of the capitalisation loan sought from MHCLG. In order for this Improvement Plan to be successfully implemented, much more needs to be understood as to how and why the council has arrived in this situation and not simply what has happened.*
5. *This investigation and its report will result in 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.*
6. *This initial investigation will comprise a desk top review of relevant council documents and a series of interviews.*
7. *The investigator will interview elected members, Chief officers, trade union representatives and other staff across the Council as well as relevant external partners. Previous Chief officers will also be invited to be interviewed. All council staff and councillors will be offered an opportunity through a secure email address direct to Richard Penn to offer any relevant information. Further additional interviews will be offered at the investigator's discretion. The investigation meetings will be held via Teams.*

8. *The notes of the meeting will be produced by Richard Penn who will provide a draft copy to the interviewee who can amend and clarify comments as recorded. These will then be assimilated by Richard Penn who will present a new copy for signature as the formal and final record of that meeting.*
9. *The report will not identify individuals either by name or job title in its commentary or recommendations.*
10. *The initial independent investigation commenced on the 23rd November 2020 and aims to conclude by the end of December 2020.*
11. *The report will be presented to the Council.*
12. *If relevant, the Interim Chief Executive will consider if any other formal proceedings are required to be commenced following receipt of the report.'*

## **Appendix 2**

### **Richard Penn**

#### **Relevant experience**

I have more than forty years' experience of strategic and high level management in the public sector in County Councils and Metropolitan District Councils. I have nineteen years' experience in total as a local authority Chief Executive including 9 years as Chief Executive of the Metropolitan Borough of Knowsley and 10 years as Chief Executive of Bradford City Council (the fourth largest metropolitan authority in England).

I was the Commissioner for Standards for the National Assembly for Wales from 2000 to 2010 and in January 2008 I was appointed by the Minister for Local Government as the Chair of the Independent Remuneration Panel for Wales, a post I held until the end of 2015. In 2002 I completed a five-year term as a Commissioner with the Equal Opportunities Commission and I also was a Commissioner with the Legal Services Commission from 2000 to 2003. From 2001 to 2007 I was Chair of the South Wales Probation Board. I currently undertake consultancy assignments for public sector organisations on my own account, for the Local Government Association, Regional Employer organisations and for SOLACE Enterprises.

Since leaving Bradford City Council at the end of 1999 I have undertaken a wide range of high- profile assignments including a large number (150 plus) of disciplinary investigations in various public sector organisations (including acting as a Designated Independent Person (DIP) on a number of occasions) and as Commissioner for Standards for the National Assembly for Wales from 2000 to 2010. Most of my investigatory work in local government has been conducted wearing an LGA or Regional Employers 'hat' and has been almost exclusively related to disciplinary matters involving Statutory Officers (HOPS, MOs and S151 officer s), Directors and heads of service.

I have also been the independent investigator in a number of elected member conduct standards cases, most recently for the London Borough of Brent last year and the London Borough of Merton and Douglas (IOM) Council last year. I have also carried out a number of major investigations in respect of public sector organisations including recently a review of the failings of the Crematorium Service at Aberdeen City Council and a review of the LB Sutton ALMO. I have been supporting a number of local authorities including Midlothian Council, South Ribble BC, LB Lewisham and LB Islington over recent months with disciplinary matters in respect of their statutory officers.

I have also been involved in a wide range of job evaluation work including acting as a 'party expert' in a number of Equal Value Employment Tribunal cases in both the public and private sectors.

**Appendix 3**

**Interviewees listed in alphabetical order:**

Name of Interviewee	Role
[REDACTED]	[REDACTED]

Name of Interviewee	Role
[REDACTED]	[REDACTED]

Name of Interviewee	Role
[REDACTED]	[REDACTED]

Name of Interviewee	Role
[REDACTED]	[REDACTED]

Name of Interviewee	Role
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

## **Appendix 4**

### **List of documents provided**

- 1) Report in the Public Interest (Grant Thornton) October 2020
- 2) Croydon Renewal Improvement Plan Cabinet report November 2020
- 3) Strategic Review of Companies – PwC Cabinet Report November 2020
- 4) Report of the non-statutory Rapid Review - MHCLG February 2021
- 5) Council Constitution - June 2020
- 6) Protocol for Decision Making
- 7) Protocol on Staff/Councillor Relations
- 8) MTFS Strategic Support – IMPOWER Paper
- 9) MTFS Validation Report – IMPOWER paper
- 10) In year Savings Report – IMPOWER paper
- 11) Annual Governance Statement 2017-2018
- 12) Annual Governance Statement 2018-2019
- 13) Annual Governance Statement 2019-2020
- 14) Annual Audit Letter 2018/19
- 15) Risk Management Policy Statement
- 16) Budget Book 2020/21
- 17) Council Tax Report to Cabinet 24/02/20
- 18) General Fund & HRA Budget 2020/21 Cabinet report
- 19) Croydon MTFS Final version December 2019
- 20) MTFS July 2020 Finance Review - Cabinet report
- 21) Quarter 1 Outturn report 2020
- 22) Quarter 2 Outturn report 2020
- 23) Growth Board Terms of Reference
- 24) Asset Strategy Board Terms of Reference and membership
- 25) Finance Review Panel Terms of Reference

- 26) Finance Review Panel agendas from 21/05/20 to 5/11/20
- 27) Executive Leadership Team Job descriptions
- 28) The Croydon Promise '2014
- 29) Croydon Corporate Plan 2018-2022
- 30) Croydon's Community Strategy 2016 – 2021
- 31) Responding to the Local Government Financial Challenge
- 32) Report of the Governance Review Panel March 2020
- 33) Workforce Strategy
- 34) LGA Review of Resources Directorate February 2021
- 35) Ofsted Inspection September 2017
- 36) Ofsted Inspection February 2020
- 37) Brick By Brick Scrutiny Report June 2020
- 38) Brick By Brick Articles of Association
- 39) Brick By Brick Business plans for 2018/19, 2019/20, 2020/21
- 40) Shared Ownership Report Ashfords

## **Appendix 5**

### **Glossary of abbreviations**

CLT	-	Corporate Leadership Team
ELT	-	Executive Leadership Team
GLA	-	Greater London Assembly
GPAC	-	General Purposes and Audit Committee
GZ	-	Growth Zone
LBC	-	London Borough of Croydon
LGA	-	Local Government Association
RIF	-	Revolving Investment Fund
RIPI	-	Report in the Public Interest
UASC	-	Unaccompanied Asylum Seeking Children

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## **1. The Seven Principles of Public Life**

The Seven Principles of Public Life (also known as the Nolan Principles) apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also apply to all those in other sectors delivering public services.

### **1.1 Selflessness**

Holders of public office should act solely in terms of the public interest.

### **1.2 Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

### **1.3 Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **1.4 Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### **1.5 Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### **1.6 Honesty**

Holders of public office should be truthful.

### **1.7 Leadership**

Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

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# Misconduct in Public Office

Updated: 16 July 2018|*Legal Guidance*

## Content

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- Cases involving a death in police custody
- Useful Links

This guidance describes the legal elements of the offence of misconduct in public office and how to apply them. It provides charging advice indicating the factors to consider when deciding if it is appropriate to charge the offence.

## Principle

### Scope of the offence

Misconduct in public office is an offence at common law triable only on indictment. It carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office.

The Court of Appeal has made it clear that the offence should be strictly confined. It can raise complex and sometimes sensitive issues. Area Prosecutors should therefore consider seeking the advice of the Director's Legal Advisor to resolve any uncertainty as to whether it would be appropriate to bring a prosecution for such an offence.

## Policy

Where there is clear evidence of one or more statutory offences, they should usually form the basis of the case, with the 'public office' element being put forward as an aggravating factor for sentencing purposes.

The decision of the Court of Appeal in *Attorney General's Reference No 3 of 2003* [2004] EWCA Crim 868 does not go so far as to prohibit the use of misconduct in public office where there is a statutory offence available. There is, however, earlier authority for preferring the use of statutory offences over common law ones. In *R v Hall* (1891) 1 QB 747 the court held that where a statute creates (or recreates) a duty and prescribes a particular penalty for a wilful neglect of that duty 'the remedy by indictment is excluded'.

In *R v Rimmington, R v Goldstein* [2005] UKHL63 at paragraph 30 the House of Lords confirmed this approach, saying:

*"...good practice and respect for the primacy of statute...require that conduct falling within the terms of a specific statutory provision should be prosecuted under that provision unless there is good reason for doing otherwise."*

The use of the common law offence should therefore be limited to the following situations:

- Where there is no relevant statutory offence, but the behaviour or the circumstances are such that they should nevertheless be treated as criminal;
- Where there is a statutory offence, but it would be difficult or inappropriate to use it. This might arise because of evidential difficulties in proving the statutory offence in the particular circumstances; or because the maximum sentence for the statutory offence would be entirely insufficient for the seriousness of the misconduct.

## Definition of the Offence

The elements of the offence are summarised in *Attorney General's Reference No 3 of 2003* [2004] EWCA Crim 868.

The offence is committed when:

- a public officer acting as such;
- wilfully neglects to perform his duty and/or wilfully misconducts himself;
- to such a degree as to amount to an abuse of the public's trust in the office holder;
- without reasonable excuse or justification.

## **A Public Officer**

The prosecution must have evidence to show that the suspect is a 'public officer'. There is no simple definition and each case must be assessed individually, taking into account the nature of the role, the duties carried out and the level of public trust involved.

The courts have been reluctant to provide a detailed definition of a public officer. The case law contains an element of circularity, in that the cases tend to define a public officer as a person who carries out a public duty or has an office of trust. What may constitute a public duty or an office of trust must therefore be inferred from the facts of particular cases.

The judgment of Lord Mansfield in *R v Bembridge* (1783) 3 Doug KB 32 refers to a public officer having:

'... an office of trust concerning the public, especially if attended with profit ... by whomever and in whatever way the officer is appointed'.

It does not seem that the person concerned must be the holder of an 'office' in a narrow or technical sense. The authorities suggest that it is the nature of the duties and the level of public trust involved that are relevant, rather than the manner or nature of appointment.

In *R v Whitaker* (1914) KB 1283 the court said:

'A public office holder is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public.'

This approach was followed in a series of cases from other common law jurisdictions: *R v Williams* (1986) 39 WIR 129; *R v Sacks* [1943] SALR 413; *R v Boston* (1923) 33 CLR 386.

In *R v Dytham* (1979) 1 QB 723 Lord Widgery CJ talked of 'a public officer who has an obligation to perform a duty'.

Remuneration is a significant factor, but not an essential element. In *R v Belton* [2010] WLR (D) 283 the defendant was an unpaid voluntary member of the Independent Monitoring Board. The Court of Appeal held that remuneration was not an indispensable requirement for the holding of a public office, or for liability to prosecution for the offence of misconduct in a public office.

The fact that an individual was a volunteer might have a bearing on whether there had been wilful misconduct, but was only indicative, rather than determinative, of whether an individual held a public office.

The court in *Attorney General's Reference No 3 of 2003* [2004] EWCA Crim 868 referred to the unfairness that could arise where people who carry out similar duties may or may not be liable to prosecution depending on whether they can be defined as 'public officers'. What were once purely public functions are now frequently carried out by employees in private employment. An example is the role of the court security officer.

The court declined to define a public officer, however, but said:

'This potential unfairness adds weight, in our view, to the conclusion that the offence should be strictly confined but we do not propose to develop the point or to consider further the question of what, for present purposes, constitutes a public office.'

In *Cosford* [2013] EWCA Crim 466, [2014] QB 81, the court had to decide whether nurses working in a prison were public officers. Lord Justice Leveson concluded that they were public officers (whether directly employed by the prison service or by a private company contracting with the prison service). He held that the limit on the scope of who is a public officer should not be focused on the position held by the defendant, rather:

'It should be addressed to the nature of the duty undertaken and, in particular, whether it is a public duty in the sense that it represents the fulfilment of one of the responsibilities of government such that the public have a significant interest in its

discharge extending beyond an interest in anyone who might be directly affected by a serious failure in the performance of the duty’.

In *Mitchell* [2014] EWCA Crim 318, [2014] 2 Cr App R 2 the Court of Appeal had to decide whether an ambulance paramedic was a public officer. Lord Justice Leveson stated the correct approach was to ask three questions:

‘First, what was the position held? Second, what is the nature of the duties undertaken by the employee or officer in that position? Third, does the fulfilment of those duties represent the fulfilment of one of the responsibilities of government such that the public have a significant interest in the discharge of the duty which is additional to or beyond an interest in anyone who might be directly affected by a serious failure in the performance of that duty? If the answer to this last question is “yes”, the relevant employee or officer is acting as a public officer; if “no”, he or she is not acting as a public officer.’

The following have been accepted as holding a public office by the courts over several centuries:

- *Coroner* (1675) Parker 2 Lev 140
- *Constable* (1703) Wyatt 1 Salk 380
- *Accountant in the office of the Paymaster General* (1783) Bembridge 3 Doug K.B. 32
- *Justice of the Peace* (1791) Sainsbury 4 T.R 451
- *Executive or ministerial officer* (1819) R v Friar 1 Chit.Rep (KB) 702
- *Gaoler* (1827) Cope 6 A&E 226
- *Mayor or burgess* (1828) Henly v Mayor of Lyme 5 Bing 91
- *Magistrates Pinney* (1832) 110 ER 349
- *Overseer of the poor* (1891) Hall 1 QB 747
- *Army officer* (1914) Whitaker 10 Cr.App.R.245
- *County Court registrar (district judge)* (1968) Llewellyn-Jones 1 Q.B.429
- *Police officer* (1979) Dytham 69 Cr.App.R.387
- *Local authority employees* (1995) Bowden 4 All E.R 505
- *DVLA employees Att Gen’s Ref (No 140 of 2004)* [2004] EWCA Crim 3525
- *Police Community Support Officer Amar Iqbal* [2008] EWCA Crim 2066
- *Immigration officers John-Ayo* [2009] 1 Cr App R (S) 71
- *Those in charge of police computer systems Gallagher* [2010] EWCA Crim 3201
- *Nurses working within a prison Cosford* [2014] QB 81

- *Church of England clergy James* (1850) 2 Den 1, 169 ER 393 though its authority was doubted in the unreported case of *Ball* (8 September 2015) in which Wilkie J ruled that a Church of England Bishop was a public office holder.
- *Local councillor* (2004) *R v Speechley* [2004] EWCA Crim 3067
- *Member of the Independent Monitoring Board for prisons* (2010) *R v Belton* [2010] EWCA Crim 2857

It is extremely difficult to extract from the cases any general identifying features of public officers in a contemporary context. A person may fall within the meaning of a 'public officer' where one or more of the following characteristics applies to a role or function that they exercise with respect to the public at large:

- Judicial or quasi-judicial
- Regulatory
- Punitive
- Coercive
- Investigative
- Representative (of the public at large)
- Responsibility for public funds

This list is not exhaustive and cannot be determinative of whether a person is properly described as a public officer, when acting in a particular capacity. The characteristics should be treated only as a guide and considered in the context of all the facts and circumstances of the particular case.

## **Wilful neglect or misconduct**

### **• Nature of the neglect or misconduct**

The wilful neglect or misconduct can be the result of a positive act or a failure to act. In the case of *R v Dytham* [1979] QB 722, for example, a police officer was held to have been correctly convicted when he made no move to intervene during a disturbance in which a man was kicked to death.

There must also be an element of knowledge or at least recklessness about the way in which the duty is carried out or neglected. The test is a subjective one and the public officer must be aware that his/her behaviour is capable of being misconduct.

### **• Meaning of 'wilful' (also see 'Breach of Duty')**

In *Attorney General's Reference No 3 of 2003* the court approved the definition of 'wilful' as 'deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not'.

In *R v G* [2003] UK HL 50 Lord Bingham said with respect to inadvertence:

*"It is clearly blameworthy to take an obvious and significant risk of causing injury to another. But it is not clearly blameworthy to do something involving a risk of injury to another ... if one genuinely does not perceive the risk. Such a person may fairly be accused of stupidity or lack of imagination, but neither of those failings should expose him to conviction of serious crime or the risk of punishment."*

Lord Steyn added:

*"... the stronger the objective indications of risk, the more difficult it will be for defendants to repel the conclusion that they must have known."* (*R v G* [2003] UK HL 50)

- **Abuse of the public's trust**

Public officers carry out their duties for the benefit of the public as a whole. If they neglect or misconduct themselves in the course of those duties this may lead to a breach or abuse of the public's trust.

- **Seriousness of the neglect or misconduct**

The behaviour must be serious enough to amount to an abuse of the public's trust in the office holder. In *R v Dytham*, Lord Widgery said that the element of culpability:

*"... must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment."*

In *Attorney General's Reference No 3 of 2003* the court said that the misconduct must amount to:

*"... an affront to the standing of the public office held. The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder."*

In *Chapman* [2015] 2 Cr App R 10, the Lord Chief Justice stated that the judge in summing up had to make clear that the necessary conduct was not simply a breach of duty or a breach of trust:

*“It is not in our view sufficient simply to tell the jury that the conduct must be so serious as to amount to an abuse of the public’s trust in the office holder, as such a direction gives them no assistance on how to determine that level of seriousness. There are, we consider, two ways that the jury might be assisted in determining whether the misconduct is so serious. The first is to refer the jury to the need for them to reach a judgment that the misconduct is worthy of condemnation and punishment. The second is to refer them to the requirement that the misconduct must be judged by them as having the effect of harming the public interest.”*

## • **Consequences**

Although the offence is not a ‘results crime’, the likely consequences of any wilful neglect or misconduct are relevant when deciding whether the conduct falls below the standard expected:

*“It will normally be necessary to consider the likely consequences of the breach in deciding whether the conduct falls so far below the standard of conduct to be expected of the officer as to constitute the offence. The conduct cannot be considered in a vacuum: the consequences likely to follow from it, viewed subjectively ... will often influence the decision as to whether the conduct amounted to an abuse of the public's trust in the officer. (Attorney General's Reference No 3 of 2003).”*

Whilst there is no need to prove any particular consequences flowing from the misconduct, it must be proved that the defendant was reckless not just as to the legality of his behaviour, but also as to its likely consequences.

The consequences must be likely ones, as viewed subjectively by the defendant. Although the authorities do not say so, likely can probably be taken to mean at the very least 'reasonably foreseeable'; it is arguable that likely may mean 'probable' in this context.

## • **Motive**

In order to establish whether the behaviour is sufficiently serious to amount to the offence, the officer's motive is also relevant:

*“... the question has always been, not whether the act done might, upon full and mature investigation, be found strictly right, but from what motive it had proceeded; whether from a dishonest, oppressive, or corrupt motive, under which description, fear and favour may generally be included, or from mistake or error ...*

*“To punish as a criminal any person who, in the gratuitous exercise of a public trust, may have fallen into error or mistake belongs only to the despotic ruler of an enslaved people, and is wholly abhorrent from the jurisprudence of this kingdom.”*

(*R v Borron* [1820] 3 B&Ald 432: Abbott CJ, at page 434.)

At its highest the motive may be malice or bad faith but they are not prerequisites. Reckless indifference would be sufficient.

## **Without reasonable excuse or justification**

It is not necessary for the prosecution to prove the absence of a reasonable excuse or justification, although the nature of the prosecution evidence should in practice negate any such element.;

The defendant may advance evidence of a reasonable excuse or justification. It is for the jury to determine whether the evidence reveals the necessary culpability.

## **Charging Practice**

### **General principles**

Where there is clear evidence of one or more statutory offences, they should usually form the basis of the case, provided the offences give the court adequate sentencing powers. The 'public office' element can be put forward as an aggravating factor for sentencing purposes.

A comparison may be made with charges of perverting the course of justice. In *R v Sookoo* (2002) EWCA Crim 800 the Court of Appeal held that adding a charge of attempting to pervert the course of justice along with counts for the principal offence or offences was only appropriate where a case had serious aggravating features (such as wasted police time and resources or detention of members of the public following false implication of them in the offence by the accused).

Similar reasoning should apply to the charging of misconduct in public office. When charging such an offence the prosecutor should provide a detailed review note of the reasons for doing so in the particular case. The note should make reference to any relevant factors referred to in this guidance, particularly where a statutory offence covering the behaviour in question is either charged or could have been charged.

For example an assault by a police officer committed on duty should not automatically be considered as misconduct in public office. A charge of assault would normally provide the court with adequate sentencing powers and the ability to take into account the breach of trust by the officer as an aggravating factor. See *R v Dunn* (2003) 2 Cr.App.R.(S).

Similarly, prosecutions for unauthorised access to or use of computer or other data systems should normally be conducted using the specific offence provided in section 55 Data Protection Act 1998. Only where the circumstances are such that a fine would not be an appropriate or sufficient penalty should a prosecution for misconduct in public office be considered.

Misconduct in public office should be considered only where:

- there is no suitable statutory offence for serious misconduct (such as a serious breach of or neglect of a public duty that is not in itself a criminal offence);
- there was serious misconduct or a deliberate failure to perform a duty owed to the public, with serious potential or actual consequences for the public;
- the facts are so serious that the court's sentencing powers would otherwise be inadequate.

## **Level of misconduct required**

The offence is, in essence, one of abuse of the power or responsibilities of the office held. Misconduct in public office should be used for serious examples of misconduct when there is no appropriate statutory offence that would adequately describe the nature of the misconduct or give the court adequate sentencing powers.

The third element of the definition of the offence provides an important test when deciding whether to proceed with an offence of misconduct in public office. Unless the misconduct in question amounts to such an abuse of trust, a prosecution for misconduct in public office should not be considered.

The culpability '... must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment' (*R v Dytham* 1979 QB 722).

The fact that a public officer has acted in a way that is in breach of his or her duties, or which might expose him/her to disciplinary proceedings, is not in itself enough to constitute the offence.

Examples of behaviour that have in the past fallen within the offence include:

- wilful excesses of official authority;
- 'malicious' exercises of official authority;
- wilful neglect of a public duty;
- intentional infliction of bodily harm, imprisonment, or other injury upon a person;
- frauds and deceptions.

## **Breaches of duty**

Some of the most difficult cases involve breaches of public duty that do not involve dishonesty or corruption.

In all cases involving breach of duty, the following matters should be considered:

Was there a breach of a duty owed to the public (not merely an employment duty or a general duty of care)?

- Was the breach more than merely negligent or attributable to incompetence or a mistake (even a serious one)?
- Regard must be had to motive.

In considering whether the neglect or misconduct was wilful, the following issues should be addressed:

- Did the defendant have a subjective awareness of a duty to act or subjective recklessness as to the existence of a duty?
- Did the defendant have a subjective awareness that the action or omission might be unlawful?
- Did the defendant have a subjective awareness of the likely consequences of the action or omission?
- Did the officer realise (subjective test) that there was a risk not only that his or her conduct was unlawful but also a risk that the consequences of that behaviour would occur?
- Were those consequences 'likely' as viewed subjectively by the defendant?

- Did the officer realise that those consequences were 'likely' and yet went on to take the risk?

## **Dishonesty or corruption**

Dishonesty or corrupt behaviour are not essential elements of the offence of misconduct in public office.

If, however, an allegation of misconduct in public office arises from circumstances involving the acquisition of property by theft or fraud, or where the holder of a public office is alleged to have made improper claims for public funds in circumstances said to be criminal, an essential ingredient of the offence is proof that the defendant was dishonest.

In *R v W* [2010] EWCA 372, a police officer used an official credit card for personal purchases. The Court of Appeal held that an essential ingredient of the offence of misconduct in public office in such circumstances was that the defendant was dishonest, and had not merely flagrantly broken the rules governing the use of the card.

When the allegation does involve the acquisition of property by theft or fraud, any misconduct should normally be prosecuted using appropriate statutory offences on the basis that an appropriate statutory offence should always be used where available in accordance with *R v Rimmington*, *R v Goldstein* [2005] UKHL63. (See Policy). The fact that the offence was committed in the course of a public office is an aggravating element.

## **Cases involving a death in police custody**

A charge of Misconduct in Public Office should never be added routinely as a lesser alternative to a charge of manslaughter by gross negligence for the purpose of catering for the possibility that a jury might conclude it cannot be sure that the breach of duty [amounting to gross negligence] caused death. The legal elements of a misconduct charge must be carefully and separately considered. A gross breach of duty is not the same as the neglect/misconduct threshold required to prove a charge of misconduct.

*AG Ref 1993* concerned an allegation that police officers failed to reposition a detainee in police detention, ensuring his airways were clear, and failed to summon

medical help. During the course of its judgement the Court of Appeal observed [at Para 64] that:

*“While this is not intended as a comment upon the present case, it will be clear from what we have said that we do not consider that, in future, in circumstances such as the present, a charge of misconduct in public office should **routinely be added**, as an alternative, to a charge of manslaughter by gross negligence on the basis that it may be difficult to establish causation. This offence is quite different from manslaughter and, as appears from the authorities, different considerations apply when considering whether to allege it”.*

Please see the guidance on deaths in custody for further information.

## **Useful Links**

Archbold 25-381

Attorney General's Reference No 3 of 2003 [2004] EWCA 868

R v Bembridge (1783) 3 Doug KB 32

R v Whitaker (1914) KB 1283

R v Williams (1986) 39 WIR 129

R v Sacks (1943) SALR 413;

R v Boston (1923) 33 CLR 386.

R v Dytham (1979) 1 QB 723

R v W (2010) EWCA 372

R v G (2003) UK HL 50

R v Borron (1820) 3 B&Ald 432

R v Dunn (2003) 2 Cr.App.R.(S)

R v Sookoo (2002) EWCA Crim 800

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# Agenda Item 7

## LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>Appointments and Disciplinary Committee</b>  <b>PART A</b>	
<b>DATE OF DECISION</b>	<b>23rd March 2023</b>	
<b>REPORT TITLE:</b>	<b>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</b>	
<b>CORPORATE DIRECTOR / DIRECTOR:</b>	<b>Katherine Kerswell Chief Executive</b> <b>Dean Shoesmith Chief People Officer</b>	
<b>LEAD OFFICER:</b>	<b>Dean Shoesmith Chief People Officer</b>  <b>Dean.Shoesmith@croydon.gov.uk</b>	
<b>LEAD MEMBER:</b>	<b>Mayor Jason Perry</b>	
<b>CONTAINS EXEMPT INFORMATION?</b>  <i>(* See guidance)</i>	NO	Public/Part A
<b>WARDS AFFECTED:</b>	<b>All</b>	

## 1 SUMMARY OF REPORT

- 1.1** This report offers advice to Members following the receipt of the Kroll report and further legal advice on addressing the Penn report recommendation regarding a potential repudiatory breach by the former chief executive of her contract of employment and potential breach of her settlement agreement.
- 1.2** This matter was last discussed by this committee in April 2022, where members agreed that action on this matter be deferred until the Kroll report was received.

## 2 RECOMMENDATIONS

For the reasons set out in the report (and its appendices), the Appointments and Disciplinary Committee is recommended:

- 2.1 To consider the recommendation of 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.

## 2.2 REASONS FOR RECOMMENDATIONS

- 2.3 For Members to consider the evidence, the legal advice, the public interest, best value and all other relevant factors in deciding whether to seek recovery of monies from the former chief executive.

## 3 BACKGROUND AND DETAILS

- 3.1 The Penn report, published by the Council on 24<sup>th</sup> February 2023, contained several recommendations to consider. Since the receipt of the report in February 2021, the Appointments Committee (now Appointments and Disciplinary Committee) has considered these recommendations and, to date, has made decisions on their implementation.

- 3.2 Paragraph 14.23 contains the following recommendation. *“The investigation has raised concerns about the actions and inactions of the former Chief Executive who is no longer employed by the Council. It is recommended that members consider a review of the settlement agreement that was signed by the Council with the former Chief Executive and whether the concerns raised in this initial investigation constitute a repudiatory breach of her contract and thus a breach of the terms of the settlement”*.

- 3.3 Other relevant information is set out and discussed in the Exempt/Part B report and the exempt appendices attached to that report.

## 5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 There are no other alternatives, other than set out in the main body of the report.

## 6 CONSULTATION

- 6.1 *Not applicable*

## 7. IMPLICATIONS

### 7.1 FINANCIAL IMPLICATIONS

- 7.1.1 These are set out in the Exempt/Part B report.

### 7.2 LEGAL IMPLICATIONS

- 7.2.1 These are set out in the Exempt/Part B report.

### **7.3 EQUALITIES IMPLICATIONS**

**7.3.1** There are no immediate equalities implications arising.

**7.3.2** Comments approved by Dean Shoemith Chief People Officer

### **8. APPENDICES**

8.1 These are listed and attached to the Exempt/Part B report.

### **9. BACKGROUND DOCUMENTS**

None.

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