

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

SUMMARY OF REPORT:

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

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

FINANCIAL IMPACT:

There are no financial implications directly arising.

RECOMMENDATIONS:

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

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

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

1. BACKGROUND

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

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

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

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

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

2. CONSULTATION

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

3. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

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

4. LEGAL CONSIDERATIONS

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

Approved by: Looqman Desai, Deputy Monitoring Officer

5. HUMAN RESOURCES IMPACT

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

Approved by: Dean Shoesmith, Chief People Officer

6. EQUALITIES IMPACT

6.1 Under section 149 of the Equality Act 2010, the Council has a duty when exercising its functions to have “due regard” to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

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

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

Approved by: Dean Shoesmith, Chief People Officer

7. DATA PROTECTION IMPLICATIONS

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

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

Approved by: Dean Shoesmith, Chief People Officer

CONTACT OFFICER: Katherine Kerswell, Chief Executive

APPENDICES TO THIS REPORT

None

BACKGROUND DOCUMENTS

None