

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