

<b>REPORT TO:</b>	<b>APPOINTMENTS COMMITTEE</b> <b>17<sup>th</sup> March 2021</b>
<b>SUBJECT:</b>	<b>INDEPENDENT INVESTIGATION IN REPOSE TO THE REPORT IN THE PUBLIC INTEREST</b>
<b>LEAD OFFICER:</b>	<b>Katherine Kerswell, Interim Chief Executive</b>
<b>WARDS:</b>	<b>ALL</b>
<p><b>FINANCIAL IMPACT:</b></p> <p>While there are no additional costs arising directly from the recommendations detailed in this report, there may be additional costs incurred should any staffing disciplinary or Member code of conduct matters proceed to formal investigation. These costs will include the remuneration of independent investigators, external advice to Members of the relevant Committees considering such matters and any necessary training for those Members.</p>	

## **1. RECOMMENDATIONS**

The Appointments Committee is recommended to:

- 1.1 Receive the report of the independent investigation into corporate management actions, organisational systems and environment, commissioned in response to the Report in the Public Interest;
- 1.2 Confirm their assurance of the processes followed in the production of the report; and
- 1.3 Subject to recommendation 1.2 above, consider the further recommendations detailed in the accompanying Part B report.
- 1.4 Recognise that it is necessary for the members of the Committee to consider the report of the independent investigation for the limited purposes set out in this report only. In view of the ongoing confidentiality of the report of the independent investigation pending the outcome of any and all individual processes, the report of the independent investigation shall not, at this time, be publicly accessible.

## **2. EXECUTIVE SUMMARY**

- 2.1 This report asks Members of the Appointments Committee to receive the report of the independent investigation into corporate management actions, organisational systems and environment in response to the Report in the Public Interest, (from herein referred to as 'the investigation').

- 2.2 The Committee is further asked to assure itself that the methodology followed in the production of the report on the investigation enables the Committee to place reliance upon that report in considering the recommendations detailed in the accompanying Part B report.

### **3. BACKGROUND AND CONTEXT**

- 3.1 At the Extraordinary Full Council meeting held on 19 November 2020, the Council received a Report in the Public Interest issued by the Council's external auditors, Grant Thornton. That report detailed significant issues relating to the Council's financial position, its financial governance and its overall effectiveness as an organisation.
- 3.2 In receiving that report, the Council also noted that an independent investigation of senior management actions in regard to the findings of the Report in the Public Interest had been commissioned by the Interim Chief Executive to gain understanding into how the Council had reached this situation and , if that if any concerns were identified then due consideration would be given to whether any action would be taken be taken under the relevant processes. .
- 3.3 While the investigation was commissioned in response to the Report in the Public Interest, there have been several further reviews and reports that have commented and made recommendations relating to the Council's financial position, governance and effectiveness, which set the wider context in which the Council has been operating.
- 3.4 Those reports include the Strategic Review of Companies and Entities, commissioned by the Council and undertaken independently on the Council's behalf; and the Non-Statutory Rapid Review of the Council undertaken by the Ministry for Housing, Communities and Local Government. Both of these reviews have also identified significant issues relating to the Council's financial position and financial and general governance.
- 3.5 In December 2020, the Council's former Director of Finance, Risk and Insurance issued two Section 114 Notices. Those two Notices stated that the Council would not be able to balance its budget in the 2020/21 financial year or over the Medium Term Financial Strategy Period (2021/24). The Section 114 Notices further stated that the Council would not be able to deliver a balanced budget, as it is statutorily required to, until such time as it received external support in the form of a capitalisation direction request of up to £150 million from the Ministry of Housing, Communities and Local Government (MHCLG).

### **4. THE INDEPENDENT INVESTIGATION**

- 4.1 The independent investigation was commissioned on 10th November 2020. The Local Government Association (LGA) supported the Council by facilitating the identification of a suitable independent person to undertake the investigation and by providing a support grant to the Council which was then used to fund the costs of the investigation.

- 4.2 Following consultation with the LGA and consideration of three possible individuals to undertake the investigation, Richard Penn, a senior LGA Associate and former Council Chief Executive who is a national expert on senior management performance and disciplinary process issues in local authorities, was appointed by the Interim Chief Executive on the 12th November 2020 to undertake the investigation. The Terms of Reference for the investigation and the CV of Richard Penn are attached to this report at Appendix 1 and 2 respectively.
- 4.3 The original brief for the investigation was shared with the initial list of 31 people to be interviewed as agreed between the Interim Chief Executive and Richard Penn. Each interviewee was offered the opportunity to suggest others to be interviewed whom they considered would be relevant and helpful to the investigation. Terms of Reference were then drawn up and these were shared with the Executive Leadership Team for consultation and feedback on 24th November 2020. The final Terms of Reference were then issued on 27th November 2020.
- 4.4 Interest grew in the investigation and so its Terms of Reference were shared with all Council staff and elected members on 27th November 2020 and a general invitation was made to anyone who wished to come forward to contact Richard Penn for an interview or to send him information and/or comments via a secure email address. In the event, the interviewee list grew to 64 people. In addition, a number of people made written submissions. The initial timeline for the investigation was for interviews to be concluded by the end of November and for the report on the investigation to be submitted to the Interim Chief Executive by the end of December. Due to the significant additional number of individuals to be interviewed and a short period of ill health, the timeline for the investigation was extended by 5 weeks.
- 4.5 It was made clear in the invitation email and the Terms of Reference that the investigation was intended to build a better understanding of what has happened at the Council which led to the Report in the Public Interest and the other independent reports. The email emphasised the Council's commitment to building a 'culture of accountability', and that the investigation was not about placing blame but seeking understanding. It also made very clear that if there were issues or concerns that came to light during the interviews and/or in the investigation generally that needed to be addressed through other formal processes, then that would be given due consideration.
- 4.6 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. A copy of the information that all interviewees were given at the start of their interviews is attached to this report at Appendix 3.
- 4.7 The Terms of Reference made it clear that the report on the investigation would not identify individuals either by name or job title. Some individuals when interviewed stressed the need for confidentiality for their contribution. Others stated they did not mind if their contribution was made public. All those interviewed were informed at the start of the interview that the Council had confirmed that the report on the investigation would at some point be in the public domain.

- 4.8 Each interviewee received a draft record of their interview with Richard Penn and they were then asked to amend or agree the record as an accurate and true record of their interview. The report on the investigation has drawn on the final agreed and signed records of each interview.
- 4.9 The report on the investigation was received by the Interim Chief Executive on 9th February 2021 following clearance with the Council's external legal advisers. The Committee will be aware that following receipt of that report, immediate action was taken in line with the Council's staffing and Code of Conduct processes in relation to the concerns that have been raised in the report. As part of that initial action, each individual was given the opportunity of checking the report for factual accuracy. At the time of writing this report, four of the nine individuals concerned have not requested that any changes are needed to be made within the deadline given for feedback. If any feedback on factual accuracy is received from the remaining five individuals, this will be fully considered by Richard Penn and any changes reported to the Committee meeting.
- 4.10 The taking of immediate action is both in line with and a reflection of the new administration's commitment to new ways of working in the Council, namely that Croydon 'will aim to become a much more transparent, open and honest Council'.
- 4.11 In receiving the investigation report, the Committee is asked to assure itself that it can place reliance on the investigation, the resulting report and its conclusions and its recommendations, and to decide whether on that basis it can give the necessary consideration to the recommendations detailed in the Part B report that accompanies this report.
- 4.12 In making that assessment of the investigation, the Committee may give consideration, amongst any other tests that it may wish to consider, to the following:
- i) The relevant skills and experience of the independent investigator;
  - ii) The methodology as explained by the investigator;
  - iii) The opportunities available to individual officers and elected members to participate in the investigation without fear of recrimination;
  - iv) The opportunities available to those interviewed to agree the records of their evidence; and
  - v) The independence of the investigation;
- 4.13 In making this assessment, it is important that the Committee focuses its attention, questioning on the process followed by the investigator, and does not stray into the content of his report, and/or the opinions of the interviewees contained within it.
- 4.14 It is important to stress to the Committee that the report itself does not express the formal views and opinions of the Council. It sets out what has already been said in a number of documents that are already in the public domain such as the Report in the Public Interest and the MHCLG Rapid Review report. It also contains the genuinely held personal and professional views and opinions of a

large number of individuals: elected members, senior Council officials and representatives of external partners who have been involved in the events over the past few years. It is the triangulation of the views expressed that has given rise to concerns that need to be addressed through other processes.

- 4.15 The Committee will be aware that the content of the report on the investigation is to be considered as part of separate formal processes being undertaken by both the Appointments (Investigating and Disciplinary) Sub-Committee and the Ethics (Assessment) Sub-Committee. Members are advised that any debate of the content of the report on the investigation may prejudice the proper consideration of the issues by those two Sub-Committees in line with the Council's constitutional, contractual and other legal obligations.
- 4.16 The Independent Investigator, Richard Penn, will be in attendance at the Committee meeting to answer any questions that Members may have in considering arrangements for the investigation.
- 4.17 It is recognised that it is necessary for the members of the Committee to consider the report of the independent investigation for the limited purposes set out in this report only. In view of the ongoing confidentiality of the report of the independent investigation pending the outcome of any and all individual processes, the report of the independent investigation shall not, at this time, be publicly accessible.

## **5. FURTHER ACTIONS TO BE CONSIDERED**

- 5.1 If the Committee confirms its assurance in regard to the processes followed in its production it will be asked during confidential session to consider further recommended actions in response to the findings in the report.
- 5.2 Those recommended actions are detailed in the accompanying Part B report.

## **6. CONSULTATION**

- 6.1 The report on the investigation has been produced following 64 interviews with Members, current staff, former staff and external partners.

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

- 7.1 The cost of the investigation has been met by the LGA as part of their improvement support grant to Croydon Council. The report is the product of 64 interviews and the review of a large number of written external reports as well as substantial documentary material provided by the Council. The cost to date of the investigation including the production of the report is £23,400.00
- 7.2 While there are no direct costs arising from the recommendations detailed in this report, there could be additional costs incurred should any staffing disciplinary or Member Code of Conduct matters proceed to formal investigation. These costs will include the remuneration of independent investigators, external advice to Members of the relevant Committees considering such matters and any necessary training for those Members.

Approved by: Matthew Davis, Deputy S151 Officer

## **8. LEGAL CONSIDERATIONS**

8.1 The Interim Director of Law & Governance comments that external legal advice has been sought on the content of this report and that advice is as follows:

8.2 It is appropriate that the report of the independent investigation is formally recorded as having been received by the Council.

8.3 It is rational that the Council should undertake an assurance exercise in relation to the report of the independent investigation. This is the specific purpose of the public element of this Committee meeting. As explained, in receiving the report of the independent investigation during the public element of this Committee meeting, the Committee is expressly not to enquire into the substance of the report as it addresses individuals.

8.4 Whilst there is ongoing consideration of whether or not to instigate a formal process in respect of one or more individuals or if any such process has been instigated until it has been finally concluded, the public disclosure of the report of the independent investigation could be prejudicial to any such process. On the basis that the report of the independent investigation includes:

- Information relating to any individual (para 1, Schedule 12A Local Government Act 1972)
- Information which is likely to reveal the identity of an individual (para 2, Schedule 12A Local Government Act 1972);

it may constitute exempt information.

8.5 Paragraph 10 of Part II of Schedule 12A Local Government Act 1972 provides that information is only “exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”. It is considered that there is an exceptionally strong public interest in seeking to ensure that the consideration of any formal process in respect of any individual is as fair as possible. Accordingly, the report of the independent investigation constitutes exempt information and should not be disclosed at this stage.

## **9. HUMAN RESOURCES IMPACT**

9.1 There are no additional human resources impacts beyond those described in the body of the report and the accompanying Part B paper.

Approved by: Sue Moorman, Director of Human Resources

## 10. DATA PROTECTION IMPLICATIONS

- 10.1 The data protection and confidentiality implications concerning the report of the independent investigation have been given careful consideration.

It has always been the intention that, at the appropriate time, the report of the independent investigation should be placed into the public domain.

Richard Penn took measures in receiving information and compiling his report to inform all interviewees that the information they provided would, in due course, be placed into the public domain and to ensure that information that may have enabled individuals to be identified was kept to a minimum.

Whilst there is any process taking place in respect of an individual arising from the recommendations of the report, it is considered that the publication of the report could be prejudicial to such process and as a result the report will not be placed into the public domain until all such processes have finally concluded. Strict confidentiality requirements have been imposed when the draft report has been disclosed to relevant persons for comment.

Approved by Elaine Jackson, Interim Assistant Chief Executive

---

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

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

Appendix 1 – Terms of Reference for the Independent Initial Investigation

Appendix 2 – CV of Richard Penn

Appendix 3 – Introductory text read at the outset of each interview

Confidential Appendix 4 – The report of the independent investigation into corporate management actions, organisational systems and environment. *Please note that this is a confidential appendix to the accompanying Part B report and is exempt from publication.*

**BACKGROUND DOCUMENTS:** Appendices 1-3 of this report.