

REPORT TO:	APPOINTMENTS AND DISCIPLINARY COMMITTEE 9 November 2022
SUBJECT:	UPDATE ON RICHARD PENN'S INDEPENDENT REPORT
LEAD OFFICER:	Katherine Kerswell, Chief Executive
WARDS:	All
PUBLIC/EXEMPT:	Public

SUMMARY OF REPORT:

This report updates the Committee on the Council's handling of the Penn report following its formal receipt and the Council's response to the report's recommendations in a form which can be published in the interests of transparency.

FINANCIAL IMPACT:

As this is an update report for noting, there are no financial implications directly arising.

RECOMMENDATIONS:

For the reasons set out in the report, the Committee is recommended to note the content of this update report.

1. BACKGROUND

- 1.1 At the Committee's meeting on 13 October 2022, the Committee considered an update on the actions arising from the independent report produced by Richard Penn. In accordance with the Committee's wishes, and in the interests of transparency, as much as possible of that report is set out below for publication.
- 1.2 The independent investigation of senior management and elected member actions was commissioned in November 2020 in response to the findings in the Report in the Public Interest (RIPI) issued by the Council's external auditors, Grant Thornton on 23 October 2020 and other published independent critical reports into the council's governance and financial failings. The Local Government Association and the then Leader of the Council were consulted about the idea of an independent report and were fully supportive of the approach. Members were informed that the report was being developed at Scrutiny and then at Cabinet.
- 1.3 The RIPI detailed significant issues relating to the Council's financial position,

its financial governance and its overall effectiveness as an organisation. The terms of reference of the independent investigation sought; “first 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”. 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.

- 1.4 The Report in the Public Interest raised a significant number of concerns that related to both member and officer practice over the past few years. The Council needed to understand in greater depth, what happened and why and what was the culture at that time that enabled or prevented the wrong / right things being done and said, that could have changed the Council’s circumstances.
- 1.5 The culture of the Council needed to change to become one of accountability and this point was raised at the time by many staff and the recognised trade unions. It was important to establish what happened and why, what learning could be built into the Croydon Renewal Plan. It was made clear that if there was anything that raised a question of a possible case to be answered, then that could be dealt with through the proper independent HR and other relevant formal processes.
- 1.6 The report was commissioned via the LGA to undertake an independent initial investigation of senior management and member actions during the time period covered by the report in the public interest. The terms of reference for the report were discussed with the then Executive Leadership Team and amendments made in the light of their feedback.
- 1.7 The terms of reference were widely shared with all Council staff and all elected members through the chief executive’s weekly communication message, and they were also published on the Council’s intranet.
- 1.8 Initially a number of individuals were identified to be approached to be interviewed. Those who were interviewed, also made suggestions for others to be invited for interview. All were welcomed.
- 1.9 All elected Members and all Council staff were then invited to come forward if they wished to be interviewed or submit information for Richard Penn to review. A number did so and all who requested to be interviewed were accepted. Staff and members were also able to directly communicate with Richard Penn.
- 1.10 The Council received the draft independent investigation report on 9 February 2021. The Council’s Constitution, as agreed by Full Council, delegates all employment matters to the Appointments Committee, and as such the report was personally delivered to the elected Members of the Appointments Committee on 12 February 2021. No elected Member was required to sit in a room and be observed whilst reading the report.

- 1.11 As appropriate, formal staffing actions followed in respect of the relevant former executive directors. All those chief officers have resigned, most recently on 6 September 2022 and there are no on-going disciplinary proceedings.
- 1.12 On the 19 February 2021, formal complaints were made against the former Leader and councillor Tony Newham and the former Cabinet Member for Finance and Resources and councillor Simon Hall under the Members' Code of Conduct. Those complaints were dealt with by the Ethics Committee and the process was discontinued after both councillors resigned on 10 March 2021.
- 1.13 The Appointments Committee received and discussed the Penn report at its meeting on 17 March 2021 which was adjourned and then completed on 23 March 2021. Members of that committee questioned Mr Penn on his report. Members considered the feedback of some of those individuals who were the subject of adverse comment in the Penn report as part of an accuracy "maxwellisation process" and following that feedback, the final version of the Penn report was then accepted by the Committee. The Committee also considered the recommendations of the Penn report, and agreed actions on each of them.
- 1.14 Thereafter the Appointments Committee received updates, and further considered the recommendations in the Penn report, on 23 June 2021 and 27 April 2022. At every meeting, Members of the Appointments Committee have been advised in regard to the progress on the implementation of the recommendations, have discussed them in full and then Members have agreed the way forward on each of the recommendations of the report.
- 1.15 Other meetings were also held by the Investigating and Disciplinary Committee implementing the decisions of Members to pursue formal disciplinary processes in response to the recommendations of the Penn report.
- 1.16 On 27 April 2022, the Appointments Committee in principle, unanimously supported the publication of the Penn report and agreed, in accordance with legal advice, that those who were the subject of adverse comment within the report should be contacted again as part of a publication "maxwellisation process". This was to formally establish their views on publication and to give them the opportunity to identify the specific paragraphs of the Penn report they would be opposed to be published and the reasons why. The public interest in the publication of the report was given full regard in this discussion.
- 1.17 All responses received are now being carefully assessed and that assessment will be reported back to the Committee for a final decision on the publication of the Penn report on a balance of the competing interests and risk.

2. Kroll investigation

- 2.1 Also of note is the investigation being conducted by Kroll Associates (UK) Limited (Kroll). Kroll are undertaking an independent, fact-finding review of the circumstances and decision-making process leading up to and following the Council's approval for Brick by Brick Ltd to undertake the refurbishment of Fairfield Halls.
- 2.2 Kroll's investigation will aim 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.
- 2.3 At the conclusion of the investigation, Kroll will produce an evidence-based report that will conclude on these matters in line with the evidence gathered. Members had earlier agreed that this report will be used by this Committee to inform the Council's response to the outstanding actions arising from the Penn report.
- 2.4 Kroll are aiming to produce a draft investigation report by the end of November 2022 which depending on its findings may then go through a maxwellisation process which will provide those named to comment on extracts of the draft report.

3. LEAKING OF A DRAFT COPY OF THE PENN REPORT

- 3.1 The Committee will be aware that from 5 October 2022 there was reporting on the Penn report on social media and in the local government and national media. The photographs of the Penn report published on social media indicate that the publications are based on a leaked copy of the Penn report.
- 3.2 The Council could not and did not comment on the specifics of the disclosures but confirmed that the Council will make a final decision on publication after the current maxwellisation process has properly concluded.
- 3.3 The Council also confirmed that in the meantime publication of the contents of the Penn report was without the Council's permission and was therefore unauthorised and unlawful. It has notified all parties who have stated they have copies of the leaked report of this and requested that they cease all commentary on its contents and return the report to the Council. No copies have been received.
- 3.4 All of the interested parties who are the subject of adverse comment in the Penn report were notified of the leak.
- 3.5 The Council has also notified the ICO of the incident pending an external investigation into the circumstances of the leaking of the draft copy of the Penn report. The Council has commissioned Kroll to undertake that investigation.

4. CONSULTATION

4.1 Not applicable

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

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

6. LEGAL CONSIDERATIONS

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

Approved by: Looqman Desai, Deputy Monitoring Officer

7. HUMAN RESOURCES IMPACT

7.1 There are no HR impacts directly arising from this report.

Approved by: Dean Shoesmith, Chief People Officer

8. EQUALITIES IMPACT

8.1 The requirement to act fairly and in accordance with the requirements of the Equality Act 2010 continue to inform the Council's decision making on the matters discussed. There are no specific equalities impacts however directly arising from this report.

Approved by: Dean Shoesmith, Chief People Officer

9. DATA PROTECTION IMPLICATIONS

9.1 The processing of personal data that will be undertaken by the Committee in dealing with the matters contained in this report is lawful and complies with data protection law.

Approved by: Dean Shoesmith, Chief People Officer

CONTACT OFFICER: Dean Shoesmith, Chief People Officer

APPENDICES TO THIS REPORT

None

BACKGROUND DOCUMENTS

None