

Appointments and Disciplinary Committee

Meeting held on Wednesday, 9 November 2022 at 2.00pm in the 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, Rowenna Davis (reserve for Enid Mollyneaux) and Stuart King

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

1. Apologies for Absence

Apologies for absence were received from Councillors Enid Mollyneaux and Callton Young

2. 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.

3. Part A Minutes of the Previous Meetings

The Part A minutes of the previous meeting held on 12 October 2022 were agreed as a correct record.

4. Update on Richard Penn's Independent Report

The Committee considered a report set out on pages 7 to 11 of the agenda which had been requested by the Committee at its previous meeting on 13 October 2022, to provide public clarity on status of the Richard Penn's Independent Report. The report was introduced by the Chief Executive, during which the following was noted.

- The report had been requested to enable the Committee to set the record straight on the report and provide reassurance on the integrity of the process.
- The report began from a discussion between the Local Government Association (LGA), the Chief Executive and the former Leader of the Council, Hamida Ali, as a means to start understanding what had

happened at Croydon and how the Council had reached the position it found itself in at the time.

- At the time there was a lot of anger amongst staff about a range of issues including the settlement made to the former Chief Executive, the Report in the Public Interest (RIPI) issued by the external auditor and the Section 114 notice, which meant it was important to commission an independent investigation.
- Terms of reference were reviewed by the Executive Leadership Team, following which individuals were contacted for interview. This in turn led to others coming forward, which resulted in the decision to open the investigation to all staff and members who may wish to input. In total 64 people were interviewed, with a written note of each discussion provided and signed off as an accurate record before inclusion in the report.
- As well as interviews, Richard Penn also drew on other reviews such as RIPI, the Non-Statutory Rapid Review and the PWC Review of the Council's Companies.
- The report was received by the Council on 9 February 2021, at which point the Executive Management Team was suspended by the former Director of HR. A copy of the report was delivered to the Committee and it met on 17 February 2021 to review these suspensions.
- The Committee met again on 17 March 2021 to review the maxwellisation process and question Richard Penn on his report. At this meeting the Committee agreed to follow the JNC disciplinary process for the former Executive Management Team, to take further legal advice on the content of the report and commission the external auditor to undertake a value for money review of the Fairfield Halls refurbishment. This review subsequently led to the second Report in the Public Interest in February 2022.
- When the Committee met on 27 April 2022 a series of actions were agreed, including waiting on the outcome from the Kroll investigation before proceeding with publication. It was agreed the Committee remained committed to publication and requested that maxwellisation process begin with a view publishing the Penn Report once the Kroll investigation had concluded.
- At the same meeting it was agreed that recommendations concerning the Member Code of Conduct and officer disciplinary processes would be progressed.
- The Committee was clear that it did not want to publish the report while staff disciplinary processes were ongoing to ensure there was no undue impact upon these proceedings. The final disciplinary process concluded in September 2022.
- In response to reports in the media making allegations that the Council was not dealing with the report, it was highlighted the Committee had met thirteen times total on the report, but there was a need to follow the due process required for disciplinary procedures. It was factually incorrect to say the report had been buried or withheld.

- It was anticipated that a draft of the Kroll report would be available by the end of November.
- Regarding the leak of the report, it was clarified that the Council had informed all individuals identified in the report of the leak, except for one who was already aware.
- It was important that the Committee requested this report as it allowed the record to be set straight in terms of the process taken by the Committee to protect council tax payers from the cost of possible legal action against the Council if the report was published without following due process.

Following the introduction to the report the Committee discussed its content, with the importance of clarifying the process and timeline in public noted. The Committee acknowledged that there was understandably frustration at the delay in publication but confirmed that it had been agreed at each stage by the Committee where further action was needed. It had always been a choice for the Committee to weigh publication of the report against the risk of litigation. It was always the intention to have the report published in as full a version as possible and now that the disciplinary process had concluded there could be a greater push toward publication.

It was agreed that it would be useful for the Committee to agree a recommendation that the report on the process and timeline be brought to the attention of officers and Members.

In response to a question about the steps still required before publication, it was confirmed that responses had been received from five of the nine individuals identified in the report, which were being worked through by Legal. Once this process had concluded there would need to be a view reached on the risk to the Council of legal action based on either defamation or data protection, which would need to be balanced against the public interest of publication. The outcome from this work would be brought back to the Committee for a decision, setting out the potential risks, followed by the version for publication being sent to the individuals involved, which meant it was unlikely the report would be published before the new year. It was highlighted that the Kroll investigation may affect the timing of publication depending on the outcome, as it may be concluded that publication would prejudice any potential action arising from the Kroll report.

It was clarified that once the Committee agreed a final version of the report for publication, the individuals identified would be sent the report, but would no longer be able to make further representations having already had two opportunities. Although there may be legal representation made that the Council was duty bound to review.

It was agreed that the Committee would meet again before Christmas to receive a further update on the progress made towards publication. It was also agreed that an executive summary of the Penn Report setting out the organisational learning, which could be published in the interim, would also be included for consideration at the next meeting.

Resolved: That –

1. The contents of the update report are noted

2. The 'Update on Richard Penn's Independent Report' considered by the Committee is brought to the attention of staff and Members.
3. That a further meeting of the Appointments & Disciplinary Committee is convened in December 2022 to consider a further report on the publication of Richard Penn's Independent Report and a potential executive summary of the learnings from the report.

5. Exclusion of the Press and Public

The following motion was proposed by Mayor Perry, seconded by Councillor Hale 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]

6. Part B Minutes of the Previous Meetings

The part B minute of the meeting held on 13 October 2022 was agreed as a correct record.

It was noted that both the Chief Executive and Assistant Chief Executive were in attendance for the Part B section of the meeting, contrary to the attendance recorded for that section of the meeting.

7. Response to Query from External Auditor Relating to Former Chief Executive Settlement Agreement

Please note that a full confidential minute has also been produced that includes confidential resolutions of the Committee.

Resolved:

1. To approve the draft response to the External Auditor's query. Note that the response is based on the Monitoring Officer's findings following the due diligence enquiries.
2. For the avoidance of any doubt, and for the reasons set out in the Monitoring Officer's findings, the Committee does not endorse the decision of the August 2020 Appointments Committee that the settlement payments made to the former Chief Executive were value for money.
3. The Committee requests the Corporate Director of Resources and the Monitoring Officer to meet with the External Auditor and convey this decision. Also, that the External Auditor is requested to reflect upon the Committee's decision in the value for money judgement for the 2020/21 financial year in the External Auditor's letter.
4. The draft response be published and submitted to the next meeting of Full Council for noting.

The meeting closed at 3.15pm