

LONDON BOROUGH OF CROYDON

REPORT:	Appointments and Disciplinary Committee	
DATE OF DECISION	23rd March 2023	
REPORT TITLE:	Accountability in Local Government	
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CONTAINS EXEMPT INFORMATION?	NO	Public
WARDS AFFECTED:	All	

SUMMARY OF REPORT

1. This report seeks to describe the current system of accountability in local government to inform the committee's deliberations on the decisions before this committee today and to ensure that all avenues of holding those responsible have been fully considered and taken account of.
2. To date, Croydon Council has implemented the decisions of this Committee in initiating disciplinary action against the conduct of the 2 remaining chief officers. Subsequently they both resigned before the disciplinary processes were concluded and a hearing held. Formal complaints were presented against the conduct of two elected members who resigned before the disciplinary process could be concluded. The commissioning of the Kroll report has enabled an evidentiary report to be produced that can be considered in regard to other forms of redress.
3. In general, accountability in local government is institutional. Most usually, residents hold Councils to account through well-known processes of review, remedy and redress. These range from referrals to Ombudsman for investigations about maladministration or, more seriously, maladministration with injustice, to judicial review in the courts if it is alleged that the Council acted unlawfully, irrationally or without fair and proper procedure. But addressing the conduct of individuals (Members or officers) is more complicated, as the routes for attaining accountability for individuals lies principally in the electoral process (for Members), and in established frameworks of professional and managerial accountability (for officers). Accountability is

exercised through the ballot box for councillors and the Executive Mayor, and they can be voted in or out of office. There is also the local government standards and members code of conduct regime but the sanctions available are considered insufficient. Accountability for officers is exercised through the employment contract where officers can be appointed, disciplined and also dismissed from their posts. If either a councillor or an officer chose to resign from their post, then the only redress available is through a criminal or civil law claim with evidence of wrong-doing provided.

4. There is bound to be disagreement and challenge to Council decisions and actions. This includes for Croydon those decisions and actions that involve investing public resources in local housing and infrastructure. Generally, these disputes occur before the event, and focus on the intent of some strategy and its prospects for success. But in Croydon's case, the 'call for accountability' has largely developed after the event and arises from the financial consequences to the Council and its residents of a series of imprudent actions and the conduct of individuals actions from 2014 to 2020. Of course, the Council is accountable corporately for the consequences of the failure of its investment strategy. The issue to be addressed is the extent to which individuals (Members and officers) can be held accountable. In practice, this is very difficult, as doing so would require a forensic understanding of the interplay between individuals and how this established or reflected the corporate culture of the organisation at that time.
5. In its examination of Council failures, the Department for Levelling Up, Housing and Communities (DLUHC) concludes that, "one common characteristic of recent statutory and non-statutory interventions is weaknesses in the local authority's culture and governance."¹ This was echoed as a finding for Croydon on the first RIPI.
6. Teasing out the respective contributions of individuals over 6 years to the creation of a weak corporate governance culture, in a proper evidential basis, is extremely difficult. The council has had two reports in the public interest and the Penn report amongst others which set out to describe the events and the different roles individuals played. The Council has most recently commissioned an independent investigation by forensic auditors, Kroll. The Kroll report is the most detailed forensic examination of past conduct by Members and officers on the refurbishment of Fairfield Halls; its findings are reported separately to this Committee (on the Part B agenda).
7. The strength of public sentiment first expressed by residents in the late Summer and Autumn of 2020, has not waned. This sentiment centres on the understandable claim that poor conduct should not be rewarded, and that people should be held to account for the damage to Croydon's services and finances. But while the call for accountability is straightforward, the actual process of holding individuals to account is not. That is because fair, proper and proportionate processes of individual accountability require independent consideration by professional bodies, and where, appropriate, the proper authorities such as the police and the crown prosecution service.
8. This report therefore seeks to lay out the current landscape of accountability for local government and the options available to members in order that the public interest has been properly considered and given its due weight and attention.

¹ DLUHC (2020) *Addressing cultural and governance failings in local authorities: lessons from recent interventions*

9. Croydon's case is unique in origin and effect, but its consequences do not stand alone. In the light of a number of Councils declaring section 114 notices and the vast scale of taxpayers' money required to bail out these Councils, a national debate is developing as to whether the current accountability framework has sufficient safeguards for local taxpayers and residents. A recommendation will be proposed for the committee to consider in regard to this developing national debate.

2 RECOMMENDATIONS

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

2.1 note the work to date on progressing accountability for the events at Croydon, the accountability options available to the Council and their limitations in the face of responding to the conduct that created the governance and financial crisis at Croydon Council.

2.2 note that the consequences and associated costs of such conduct and the accountability processes themselves are borne by Croydon residents.

2.3 note that other reports on this Committee's agenda will consider recommendations in regard to referring the suite of reports the council now possesses to the proper authorities such as the Metropolitan Police and also to any relevant professional bodies and institutes who operate a disciplinary code in relation to their membership for their consideration.

2.4 agree that the Executive Mayor, as chair of this committee, write to the Secretary of State at the Department for Levelling Up, Housing and Communities (DLUHC) requesting that Government consider the inadequacy of current arrangements in respect of the formal accountability for conduct in public office, and urgently put new arrangements in place to remedy this so that residents in other local authorities are protected and spared the scale of costs and damage to services that have befallen Croydon Council and its Council taxpayers.

2.5 agree that the Executive Mayor, as chair of this committee, write to the Committee on Standards in Public Life and Chartered Institute of Public Finance and Accountancy (CIPFA) on the need for an accountability framework in circumstances where there have been catastrophic failures in financial governance such as that experienced in Croydon.

2.6 agree that the Executive Mayor, as chair of this committee, write to the Chair of the Levelling Up, Housing and Communities Select Committee on the need for an accountability framework in circumstances where there have been catastrophic failures in financial governance such as that experienced in Croydon.

REASONS FOR RECOMMENDATIONS

- 2.5** The Council has been the subject of unprecedented governance and financial crises as a consequence of the conduct and decisions of elected members and senior officers.

- 2.6 The Council's Chief Finance Officers has had to issue three separate Section 114 reports over the last three years.
- 2.7 The Council's external auditor Grant Thornton has issued two separate Reports in the Public Interest that are extremely critical of the Council's governance arrangements relating to its finances.
- 2.8 The Council has had to request extraordinary financial support from the government to the sum total of £369m in order for the Council to be financially sustainable. This has resulted in a 14.99% Council Tax rise to all households in Croydon, as well as an incredibly straitened budgetary position for the Council currently and for the next few years.
- 2.9 The Council has had to formally request the Government to consider a debt write off of £540m and other measures to enable the council to have a sustainable budget due to the annual £66m cost of servicing the £1.3 billion general fund debt.
- 2.9 There have been a considerable number of calls from within the Council (staff as well as Members) and residents for people to be "held to account" for their past decisions and actions. The Committee has expressed its intention to properly and fairly hold those responsible for these circumstances to account.

3. BACKGROUND AND DETAILS

- 3.1. The governance and financial crisis that Croydon Council has experienced is unprecedented in the Council's history. This has led to the extraordinary position where the Council has had to request borrowing approval from Government for £369 million in total and debt write off of £540 million.
- 3.2. In November 2020, and for the first time in 20 years, a London Council - Croydon, had to issue a Section 114 notice, which became the first of three such notices. Again, a situation without precedent in local Government.
- 3.3. The Council received two formal 'Reports in the Public Interest' (RIPI, October 2020 and January 2022) from Grant Thornton, its external auditors. These are the most seriously critical reports that external auditors publish about the conduct of the public body they are auditing. The first RIPI, in October 2020, concluded that **"there has been collective corporate blindness to both the seriousness of the financial position and the urgency with which actions needed to be taken."**
- 3.4. The second RIPI in January 2022 concluded, **"The Council's historical arrangements failed to ensure the legality of the arrangements for the project and allowed governance gaps which prevented monitoring of the project, oversight, and wider scrutiny and challenge that may have allowed corrective action to have been taken. Throughout the project there were individuals with both the knowledge of the many issues with the project and who had duties and responsibilities which we would expect to require action to address the known issues. The lack of appropriate action, in our view, represents a failure."**
- 3.5. The financial crisis meant that an initial submission to DLUHC to request extraordinary financial support of £150m was necessary. A total of £67m was required immediately to cover the

overspending in the 2020/21 financial year. Three further sums of £50m for the financial year 2021/22; £25m for this financial year; and then £5m for 2023/24.

- 3.6. Over the last 6 months, the Mayor's 'Opening the Books' programme has enabled the Council to examine the Council's finances in even more detail. This has uncovered further significant failings in past practice and conduct. This has resulted in another request for extraordinary financial support of £224m.
- 3.7. Therefore, in total Croydon has had to request additional borrowing powers to the sum of £369 million.² The Council also has a general fund debt position of £1.3 billion, with very little assets available to clear that debt, and a large amount of which is unsupported by asset holding. For 2023/24 financial year, this debt will cost £66million to the Council's revenue budget. The debt levels are an intentional consequence of the then previous Treasury Management Strategy which planned to increase the council's debt to over £2billion by this financial year. Without government resolution for this debt, the council will never become financially sustainable.

Accountability

- 3.8. There have been a considerable number of calls from within the Council (staff as well as Members) for people to be "held to account" for their past decisions and actions. This is understandable. Staff know that should they breach Council policy, or act in ways that waste public money, that they are likely to be subject to management discipline. Worse they could lose their jobs and find that their careers are blighted. It is then entirely understandable for staff as well as residents to ask - should those whose past decisions and conduct have resulted in a £369 million hole in the council's budget and £1.3 billion of debt receive no apparent sanction? These questions hit to the heart of accountability in public life. But working through the issue of accountability in local government is not at all straightforward.
- 3.9. According to the *Oxford Handbook of Public Accountability*,³ "the idea of accountability is rooted in the practice of book-keeping and in the discipline of accounting. Accounting always has a dual meaning: it is about listing and counting important "things" - possessions, debts, agreements, promises - and about providing an account concerning this count. Thus, it implies telling a story, based on some obligation and with some consequence in view."
- 3.10. In economic theory, accountability is often described through the "principal - agent model" where a principal provides money to an agent in exchange for the provision of a service - usually through some form of contract for service. The principal then holds the agent to account through, say, requiring regular reports on activities, performance and outcomes. If the principal considers that the agent has not satisfactorily delivered the performance expected, they can (subject to proper lawful process) void the contract and find an alternative agent.
- 3.11. This straightforward theory is, of course, complicated when it comes to the practice of what actually happens in modern economies. First, agents will often appoint sub-agents to perform the expected functions; and sub-agents may then appoint sub-sub-agents to fulfil specialised

² The final tranche of £5m the December DLUHC submission for £150m is incorporated within the additional sum of £224m requested in January 2023

³ Bovens M, et al, eds (2014) *The Oxford Handbook of Public Accountability*

elements of these functions. This can create a long “chain of accountability” from the original principal to the final agent. One solution to this problem is to incorporate all these agents within the boundary of an organisation - so that the overall contract for performance is one based on employment and not on a contract for service.

- 3.12. The principle of this approach was established in the late 1930s by Ronald Coase.⁴ He argued that where the cost of transacting with others becomes so high and/or costly to manage, firms will respond by employing people directly. In this way accountability through service contracts is replaced with accountability through employment contracts. Of course, in market economies, where there is competitive rivalry between firms for customers for their products or services, the mechanism of accountability is open competition and the ability of customers to choose alternative providers.
- 3.13. In the government and public sector, citizens and taxpayers cannot usually ‘exit’ from public provision - more often than not, public service has the characteristics of a ‘monopoly’. Residents may be able to go to a library, a park or a swimming pool in another borough, but they can’t get their planning application determined by another Council or pay their Council Tax to another Council. As a result, in the government and public sector, accountability is exercised through ‘voice’ and claims for review, redress and remedy.⁵ Moreover, any ‘chain of accountability’ is long.
- 3.14. The ‘principal’ in the public sector accountability chain can be viewed as the public, the taxpayers and the electorate. Their agents are those whom they elect to govern: Members of Parliament, a directly elected Mayor or elected councillors. They then become the public’s principals - for it is they (the MPs and councillors) who oversee the delivery of public functions and services. In local government it is the councillors who choose between different priorities and competing claims. But these principals (such as the Mayor or councillors) do not act directly. They engage agents, the senior officials, to advise them and to implement their decisions. These senior officials are not cyphers of the politicians who appoint them (i.e., merely their agents) but are independent and impartial - they are professional and principled agents. These senior officials then engage yet others - through employment contracts or through service contracts to perform the Council’s duties and to secure cost-effective services and public infrastructure investment. The routes to achieving accountability therefore involve democratic and organisational mechanisms, as well as professional and managerial mechanisms.
- 3.15. When it comes to local government there are five inter-connected layers of accountability:
- (1) democratic accountability of elected councillors to the electorate;
 - (2) political accountability within Councils through processes of overview and scrutiny, as well as through audit committees and ethics panels;
 - (3) accountability between the political executive (the Leader and Cabinet as was, and now the Mayor and Cabinet) and the Council’s statutory and chief officers. These officers help the political executive pursue their agenda, while also being accountable to all councillors;

⁴ Coase R (1937) *The Nature of the Firm*

⁵ Hirschmann A (1970) *Exit, Voice and Loyalty*

(4) managerial accountability between these senior officers and other officers that report to them; and

(5) contractual accountability from the Council to those companies delivering functions and services through service contracts.

3.16. Generally, the call for greater accountability occurs, after the event, when things have gone wrong. It is also, understandably, focused on the conduct of individuals and the extent or degree to which their conduct acted as a causative contribution to some overall failing. However, analysing why things went wrong is rarely simple - discovering the precise root causes as to why things went wrong, can be very complicated, especially when this is a failure of governance and corporate culture.

3.17. Things can go wrong for many reasons. A particular strategy may be unrealistic or unaffordable from the outset. A sensible strategy may be rendered undeliverable by unforeseen or unforeseeable events. An over-zealous pursuit of a strategy without sufficient regard to practicalities, risks and consequences is not uncommon. Moreover, the motivations of the decision makers and those who advise them may be wholly irrelevant to the success of these decisions. Decisions made in good faith for proper purposes can nonetheless be poor decisions if they are not lawful, nor deliverable, nor prudent.

3.18. Usually, it is not because people want to make wrong decisions, rather they consider the decisions they are making are correct. They simply disregard the potential adverse consequences of their proposed actions while developing an irrational optimism that what they are doing will produce the results they intend. Being confident is the right route to success but being over-confident is the root of failure.

3.19. In choosing ways forward, there are two main types of strategic error:

- Type 1 error - **failure of foresight**. This occurs when decision makers choose to do something that subsequently proves to have been the wrong choice
- Type 2 error - **benefit of hindsight**. This is when decision makers choose not to do something that looking back, would have been the better choice

3.16. But a detailed examination of why things went wrong in any particular instance requires a more nuanced and evidenced analysis. How can the relative causative contributions to failure be parsed between the key actors concerned; between, say, the politicians who decided on a course of action or the officials who recommended the options for a course of action, or who failed to provide the appropriate advice on the action? And, at a broader level, was the chosen strategy broadly correct but very poorly implemented; or was the strategy chosen without proper consideration of alternatives? Finally, was the strategy chosen without regard to wider corporate responsibilities. For example, in local government, with multiple functional responsibilities, strategic errors in one domain (whether in decisions about child safeguarding or commercial investments) can subsequently have significant consequences for the future of many or all other Council functions.

- 3.17. It has become a near convention in respect of service failures in local government, for regulators to refer to “missed opportunities to intervene” to prevent an unsatisfactory position getting worse. This approach, of counting the number of such missed opportunities, began some thirty years ago in child protection and safeguarding case study reviews. But recently it has been more widely applied, or inferred, when organisations are said to have “blinded themselves” to bad practice across their organisations - especially when toxic behaviours of senior leaders, such as bullying foment dysfunctional relationships. In these cases, the number of instances are not counted but conclusions are drawn from the evidence of an overall pattern of behaviour. That noted, it remains the case that these issues are easier to assert than to hold to account.
- 3.18. Historically, the main discussions about accountability in government have centred around Ministerial decision making and Parliamentary processes. These have arisen from public interest scandals and judicial investigations into Parliamentary process, as well as from Ministerial and civil servant protocols.⁶ Mostly, these have arisen over concerns about the accountability of Ministers to Parliament. From time to time, they have also centred on the role of senior civil servants in advising Ministers. This is mentioned here as there are important constitutional differences between senior civil servants and senior local government officers.
- 3.19. The Ministerial code explains the role of the 23 heads of Government departments and the 40 chief executives of its ‘executive agencies’ as - accounting officers. In the relevant section, it says that the role of the accounting officer is:

“a personal responsibility for the propriety and regularity of the public finances for which he or she is responsible; for keeping proper accounts; for the avoidance of waste and extravagance; and for the efficient and effective use of resources. Accounting Officers answer personally to the Committee of Public Accounts on these matters, within the framework of Ministerial accountability to Parliament for the policies, actions and conduct of their departments.

Accounting Officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and more broadly as to all considerations of prudent and economical administration, efficiency and effectiveness and value for money. In line with the principles set out in [Managing Public Money](#), if a Minister in charge of a department is contemplating a course of action which would involve a transaction which the Accounting Officer considers would breach the requirements of propriety or regularity, the Accounting Officer will set out in writing his or her objections to the proposal, the reasons for the objection and the duty to inform the Comptroller and Auditor General should the advice be overruled.

If the Minister decides nonetheless to proceed, the Accounting Officer will seek a written instruction to take the action in question. The Accounting Officer is obliged to comply with the instructions and send relevant papers to the Comptroller and Auditor General. A similar procedure applies where the Accounting Officer has concerns about whether a proposed course of action offers value for money. This notification process enables the Committee of

⁶ The 1954 Crichton Down Affair led to the first thorough examination of Ministerial accountability to Parliament. Since then there many investigations have been conducted. The current position is set out in the Ministerial Code: <https://www.gov.uk/government/publications/ministerial-code/ministerial-code#ministers-and-civil-servants>

Public Accounts to see that the Accounting Officer does not bear personal responsibility for the actions concerned.”

- 3.20. Constitutionally, this is quite different to the role description for statutory officers in local government. First, local government officers do not give advice to the political executive under anything comparable to the cloak of Ministerial privilege.⁷ Their advice, whether orally or in writing, is available to all members of the Council. Second, and especially in respect of the chief financial officer and the monitoring officer, their powers are stronger in relation the control of finances and to propriety in decision making. Senior local government officials do not set out their professional views, for them to be set aside or over-ridden by a written instruction from the Leader/Mayor nor Cabinet Member. Instead, the Council’s most senior statutory officers have clear responsibilities and a constitutional personality that reflects statutory regulations and the Council’s constitution. Members can decide on a course that isn’t recommended to them by officers, but only if it is lawful, deliverable and affordable.
- 3.21. In Croydon, part of the conduct failures that have been described in the second RIPI relate to the appropriate exercise or not of the duties of statutory officers, most particularly the Section 151 Officer and the Monitoring Officer. There is an important consideration in improving accountability processes in local government as to whether any formal assurance of the performance of those officers who undertake such an essential safeguarding role in the governance of a local authority is needed.
- 3.22. This constitutional difference is further illustrated by the fact that Councils are a singular and unified corporate entity. The housing department, simply by way of example, cannot be sued for negligence by its tenants, but the Council certainly can. And likewise, no individuals (whether Members or officers) may be subject to judicial review - but the Council may be corporately. Whereas Ministers can be subject to judicial review if their decisions are found to be illegal, procedurally unfair or irrational.⁸ This does not mean that instances of negligence or breach of trust arising from poor conduct of individual officers are always made corporate - gross negligence in respect of, say, health and safety legislation can lead to heavy personal consequences (up to imprisonment) for those concerned.
- 3.23. At the personal level, policy accountability in local government can involve ‘giving an account’ of what an individual has done, has advised or is proposing to do. This ‘giving an account’ involves describing or explaining individual actions and conduct. ‘Being held to account’ is different. In respect of policy implementation, officers of the Council ‘give an account’ to all councillors, but they are ‘held to account’ by the Executive. That is because only the political executive (and those few Council-side committees like planning and licensing) can stop implementing existing policy or start implementing new policy.

⁷The Armstrong Memorandum describes the duties and responsibilities of civil servants in relation to Ministers. They are often referred to as the ‘Osmotherly rules’, after the author, a senior civil servant, who wrote them in 1980. They were amended in 1996 and again in 2014.

<https://erskinemay.parliament.uk/section/4569/ministerial-accountability-to-parliament/>
<https://www.instituteforgovernment.org.uk/article/explainer/ministerial-accountability>

⁸ Decisions by public bodies can be judicially reviewed on grounds of illegality, procedural unfairness or unreasonableness/irrationality. Judicial Review and Courts Act 2022

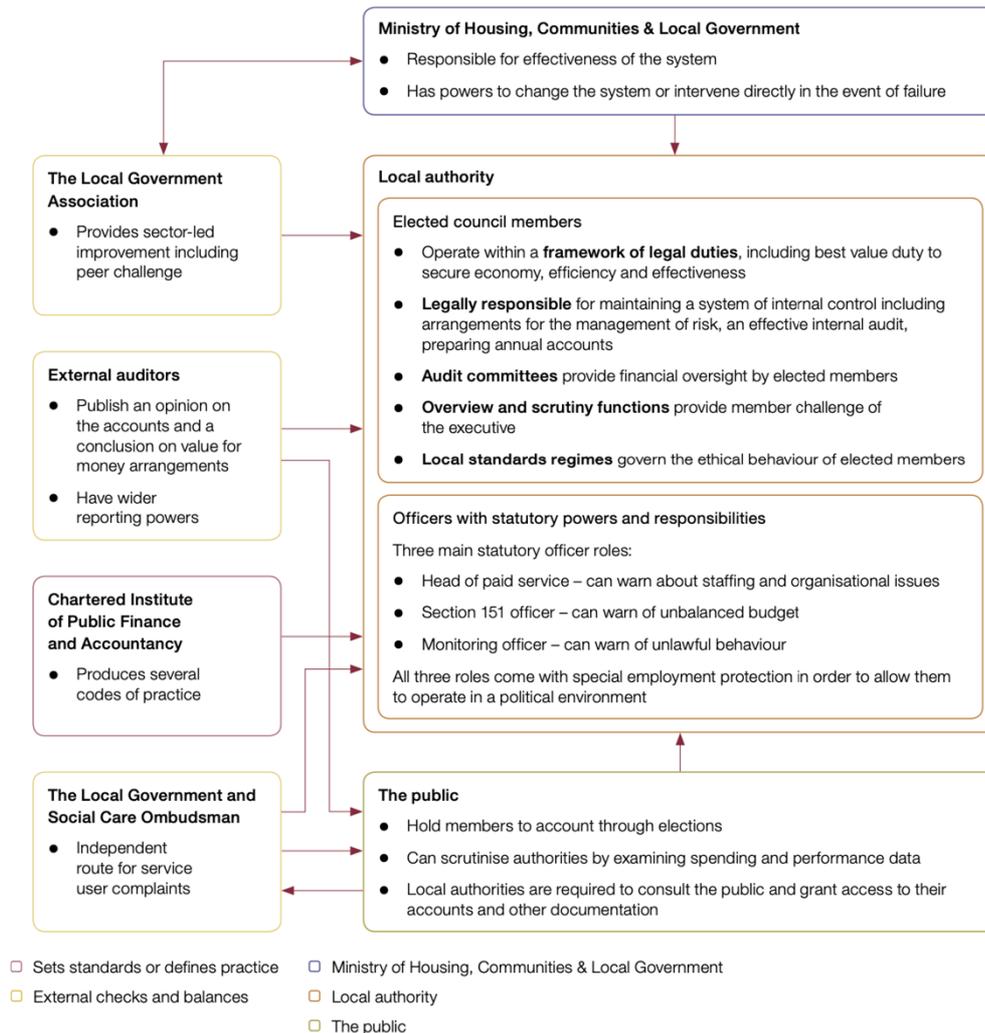
- 3.24. More importantly, in local government, accountability is usually made corporate, or institutional, by the fact that as a public body it is indivisible. But the other side of the coin to accountability, is responsibility. Individuals have responsibilities for things as well as accountabilities to others. Generally, individuals are responsible for things today and tomorrow, while they are accountable to others for what they did yesterday. This usually implies being accountable for failings or failures. Failure is an intrinsic and unavoidable aspect of human life, let alone public affairs. You can only progress by learning from failure. But in public authorities it is best to learn before small failings become enormous failures. Small failings can beget bigger failures or they can accumulate into massive failures. Errors, mistakes and failings should be subject to Council systemic learning. What is required are appropriate management controls (at all levels) and high quality risk management arrangements. But this requires an open, inclusive, creative and disciplined organisational culture that is built on learning and measured risk taking.
- 3.25. The Overview and Scrutiny and the Audit Committee function within local government constitutions play an important role in holding to account members and officers for their decisions and advice. However, as the Kroll report and the RIPI's reveal, those committees can only perform that function if information is provided to them as requested and officer advice is fully and freely given. The webcast records show that scrutiny members at Croydon did raise important questions about the matters which led to the financial crises at Croydon, but these were not fully answered.
- 3.26. If members and officers have concerns, there is of course the council's whistleblowing policy which is independently run at Croydon. However, if the overriding culture is one of fear and bullying, confidence in the confidential use of such a process is usually low. There are external avenues also available such as a referral to the Local Government Association or to the External Auditor, or even DLUHC but these are not widely understood.
- 3.27. Local government contains many professional subject experts; and these professionals owe their responsibilities to service users, to service advocates, and to the public interest - not simply to their direct line manager nor to the Cabinet Member who has political responsibility for the function in which they work. People should take their personal and professional responsibilities very seriously - for its their responsibilities of today, that determine the character of their accountability tomorrow.
- 3.28. The most senior local government professionals such as the chief executive, the chief financial officer and the monitoring officer, have serious and significant responsibilities to ensure the proper governance and management of the authority. Leading Members may hold strong opinions on, "what should be done, when and how". But its' the role of officers to ensure that decisions are made properly; that resources and assets are well managed; and that services are sustained in cost-effective ways. Councils are almost entirely free to determine what they should do - as long as that is within the bounds of the law and the envelope of the resources available.
- 3.29. In summary, and at the broadest level, the Council is democratically accountable to the public it serves through the discipline of the ballot box - the electoral process. Of course, public accountability does not happen once every four years. Throughout their time in office, Members are accountable to the public continually through a range of processes that ensure openness, transparency and disclosure. But this accountability of councillors is supported by the professional and managerial accountabilities of Councils core statutory officers.

Assurance

- 3.30. Compared to Government and to other public bodies, local government is arguably the most open, transparent and accountable. Unfortunately, that doesn't mean that all actions by all Councils are equally open, transparent and accountable. But generally, it is the case that local government leads the way on transparency. The vast majority of local public interest decisions are made in open meetings, with professional advisors and Members open to challenge and criticism.
- 3.31. Since 2010, the approach to assuring quality standards in local government services has been through sector-led self-improvement rather than through regulatory inspection and assessment (saving Ofsted, the Care Quality Commission and a few others). The Local Government Association (LGA) has set the pace for corporate peer challenges amongst Councils as well as for service specific peer challenges. In addition, across London there has been an approach to sector-led improvement which has involved leading Members, Chief Executives and service Directors. Chief financial officers across London have also provided professional and technical support to Councils who have been operating in very straitened circumstances.
- 3.32. This 'assurance' approach is both general and generalised. It is not hard-edged accountability that focusses on individuals' performance, but broader assurance about institutional performance. Assurance involves the provision of information and evidence by a body to assure others that it will achieve its goals and targets. It usually takes the form of rounded metrics on overall performance against targets. Assurance reporting is becoming a regular feature of public body reporting, although some (especially NHS trusts) focus more on re-assurance reporting. These re-assurance reports are produced to address particular doubts and concerns about aspects of organisational performance.
- 3.33. Re-assurance reports involve more qualitative insight from clinicians or expert professionals so as to re-assure those expressing these doubts and concerns. Few Councils produce assurance or re-assurance reports; and few produce 'impact reports' - that focus on the outcomes of their activities on the overall well-being of the communities that they serve. Instead, Councils tend to produce corporate risk registers, that identify the likely and most consequential risks to the achievement of their goals, and the management controls they have in place to mitigate these risks. It is usual practice to publish these risk registers openly and for Audit Committees to consider them, and not just the political executive.
- 3.34. The National Audit Office (NAO) produces reports, from time to time, on the overall governance and financial assurance of the local government sector. Their most recent whole system

assurance report was published in January 2019. In this report they produced the diagram below to illustrate the regulatory environment as well as the checks and balances on local government.⁹

Core local governance framework



Notes

- Links with other departments and service inspectorates not shown.
- There are other statutory roles in an authority but the three listed in the chart are our main focus.
- Arrows show the main influences acting on local authorities' governance arrangements.

Source: National Audit Office analysis of Ministry of Housing, Communities & Local Government information

3.35. The diagram above provides the most up to date and comprehensive map of the accountability and assurance mechanisms to which local government is subject. In early March 2023, the LGA responded to a peer challenge of its own operations by suggesting, among other things, that it intended to strengthen its approach to local government improvement and assurance. A widespread review is about to be instituted by the LGA to help all Councils provide their public with a more comprehensive statement of their performance and the rate of their improvement as an organisation. This will be built on existing arrangements such as Annual Governance Statements, financial and performance reporting, as well as responses to regulators and Ombudsmen, etc.

⁹ NAO (2019) Local Authority Governance, page 6

- 3.36. The Chartered Institute of Public Finance and Accountancy (CIPFA) is currently reviewing practice requirements for chief financial officers in local government and is also developing a resilience index to support the work of the new Office for Local Government (OfLog) which will itself produce a framework for improved financial and other reporting sector-wide.
- 3.37. In support of this LGA effort, the lead professional bodies are currently examining how best they can contribute to spotting problems and difficulties in Councils before they become troubling, disruptive and costly for residents. For the cost of error is borne not by the Council, nor by the professionals but by residents. Capitalising the cost of these revenue errors can only be done by applying for extraordinary capital borrowing permission from DLUHC. This borrowing is not spread across businesses and resident taxpayers - it can only fall on residents.

What options are available to hold individuals to account?

- 3.38. Individual councillors are accountable principally to their electors. They are also accountable corporately to the Council through their agreement to conduct themselves in compliance with the LGA's model Member Code of Conduct and the Council's own locally adopted Member Code of Conduct based on the LGA code. Earlier approaches, such as 'financial surcharge' were replaced with the creation of standards committees within Councils. But the requirement for these standards committees was abolished in 2011 and the Standards Board for England was abolished in 2012. While complaints about Member conduct do arise from electors and others, it is also the case that alleged breaches of the Code of Conduct can often arise from complaints from other councillors. In 2022, the Government rejected a long-standing proposal from the Committee for Standards in Public Life to strengthen the sanctions for breach of the LGA's model Code. This means that the sanctions for individual councillors centre on their party affiliation (i.e. whether or not the party whip is removed from them); and also whether the Council formally removes the councillors concerned from Council committees - they cannot be barred from attending, participating and voting at full Council meetings.
- 3.39. For councillors who resign, there is no sanction available to the Council. The Ethics committee was beginning to respond to two formal complaints against elected members which ceased on their resignation. Wrongdoing could be also subject to consideration by the proper authorities such as the police and the crown prosecution service.
- 3.40. Individual officers are subject to management discipline - up to and including, dismissal. This Committee has had regard to these matters in respect of former officers - while they remained in the Council's employment.
- 3.41. Some of these members and officers also owe practice duties to their professional bodies. This is especially the case in respect of chief financial officers and to monitoring officers (where those monitoring officers are practicing lawyers). It is open to the Committee to consider referring the suite of reports to professional bodies and institutes as well as to the proper authorities, where appropriate.
- 3.42. Where officers have resigned and left the Council's employment, the Council can assert no employment-based sanction. This includes those core statutory officers as well as the wider group of chief officers.

- 3.43. Where the Council has suffered significant financial losses because of the wrongdoings of former officers and members, there is the possibility of a civil claim (tort) for misfeasance in public office. Misfeasance in public office is an action against a holder of public office. It provides a remedy for persons who are injured by the actions of a public officer who has exercised his powers in bad faith. It is an unusual tort in that the prime focus is on the motivation of the defendant. The ingredients of the tort a) The defendant must be a public officer; b) The defendant must have exercised power as a public officer and deliberately and consciously in order to give rise to liability; c) The defendant must have acted unlawfully and with malice or in bad faith, either with the intention of injuring the claimant or, being aware of the risk of such injury, without an honest belief that his conduct was lawful. The defendant must have been aware that his conduct was unlawful but recklessly ignored the risk; d) That conduct must have caused the claimant material injury or damage of a sort foreseen by the defendant. To bring a claim, the evidential threshold must be met, and there must be a reasonably good prospect of success and of award of damages for the financial loss suffered.
- 3.44. Where the wrongdoing could give rise to a criminal action (for example for misconduct in public office¹⁰) serious consideration should be given to referring the suite of reports obtained to the Metropolitan Police. Consideration should also be given to avoiding any actions that would potentially prejudice any Police investigation and decision on prosecution.
- 3.45. There can be little doubt that public trust and confidence in the Council has been fractured by the Council's governance and financial crisis, and the significant impact this has had on all residents which has led to the significant public demands for accountability.
- 3.46. Understandably, the expectation is that these demands can be met swiftly and cost effectively. In reality, the legal and other processes bearing down on councils in these situations are very costly, labour intensive, strongly contested, protracted and fraught with risk.
- 3.47. In these circumstances, councils have to manage litigation risks and threats of legal action and ensure due process is followed as well as the legitimate aims of transparency, public understanding and engagement and accountability. There is no doubt that councils should remain steadfast in pursuance of an overriding objective of doing the right thing but there are many challenges.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. This report has set out the complications and the difficulties that will have to be addressed in attempting to successfully hold previous public office holders (members and officers) to account. It also presents a range of options for members to consider in regard to these complex issues.
- 4.2. The other option that is available for the Committee to consider is to not proceed with holding public office holders to account. Members will be aware of the public interest which accountability

¹⁰ Misconduct in public office is an offence at common law triable only on indictment. It carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office. The offence is committed when: a) a public officer acting as such; b) willfully neglects to perform his duty and/or willfully misconducts himself; c) to such a degree as to amount to an abuse of the public's trust in the office holder; and d) without reasonable excuse or justification.

for misconduct raises. Members will need to pay due regard to the public interest in taking decisions on this paper and others on this committee's agenda.

6. Contribution to Council priorities

6.1. This report focusses on how the Council can be more accountable to the public and residents it serves - one of the Council's core priorities.

7. IMPLICATIONS

FINANCIAL IMPLICATIONS

7.1 There are no financial implications directly arising from this report.

7.2 Comments approved by Jane West Corporate Director Resources and Chief Finance Officer. (150323)

LEGAL IMPLICATIONS

7.3 There are no legal implications directly arising from this report's recommendations.

7.4 Comments approved by Looqman Desai, Deputy Monitoring Officer, on behalf of the Director of Legal Services and Monitoring Officer. (150323)

EQUALITIES IMPLICATIONS

8.1 There are no equalities implications directly arising from this report. However, as the main body of the report outlines, it is in the council's interests and in the public interest to ensure that those responsible for the council's financial situation and governance failures are fairly and properly held to account so that public trust and confidence can be restored. In holding people to account the council should ensure there is no bias, unequal or less favourable treatment on the grounds of one or more protected characteristics.

8.2 Comments approved by Dean Shoesmith, Chief People Officer. Date 15/03/2023.

BACKGROUND DOCUMENTS

9.1 None

