

REPORT TO:	APPOINTMENTS AND DISCIPLINARY COMMITTEE 23 March 2023
SUBJECT:	FAIRFIELD HALLS KROLL INDEPENDENT INVESTIGATION REPORT
LEAD OFFICER:	Katherine Kerswell, Chief Executive
WARDS:	All
PUBLIC/EXEMPT:	<p>PART A: Public with exempt appendices:</p> <p>1. Kroll Scoping Phase Report and Detailed Investigation Plan</p> <p>2. Kroll Report: Review into the refurbishment of Fairfield Halls</p> <p>Under paragraphs 1 (information relating to any individual) and 5 (information in respect of which a claim to legal professional privilege could be maintained in legal proceedings) and, in all the circumstances, the public interest in maintaining the exemptions outweigh the public interest in disclosing the information</p>

SUMMARY OF REPORT:

The purpose of this report is for the Committee to receive the Kroll independent investigation report into matters raised by the Fairfield Halls Report in the Public Interest published 26 January 2022.

The Kroll independent report has been subject to a Maxwellisation process in relation to 14 individuals named in the report.

FINANCIAL IMPACT:

There are no financial implications directly arising.

RECOMMENDATIONS:

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

- (i) Receive and consider the report of the independent investigation into matters arising from the Fairfield Halls Report in the Public Interest conducted by Kroll Associates (Kroll) **Exempt Part B Appendix 2 Kroll Report: Review into the refurbishment of Fairfield Halls**

and

- (ii) Agree that the Kroll investigation and report have achieved the objectives set and can be relied upon.

1. BACKGROUND

- 1.1 Most recently, the background to this matter was set out in a public and exempt/Part B report considered by the Committee on 23rd February 2023 in relation to the publication of the LGA 'Penn report' and previous updates provided to the Committee.
- 1.2 Many of the same themes and findings in the Penn report are mirrored in the Kroll independent investigation into matters arising from the Fairfield Halls Report in the Public Interest also appended to this report.
- 1.3 On 3 February 2022, at an Extraordinary Council meeting, the Council formally received a Report in the Public Interest ('RIPI 2') issued by the Council's external auditor, Grant Thornton, on 26 January 2022. RIPI 2 detailed significant issues relating to the handling of the Fairfield Halls refurbishment project 'the project'.
- 1.4 The Council accepted the findings of RIPI 2 in full and agreed a comprehensive action plan to address the recommendations made by Grant Thornton, which is being led by the Council's Monitoring Officer.
- 1.5 Following receipt of RIPI 2 on 26 January 2022, the Monitoring Officer, at the Extraordinary Council meeting on the 3rd February 2022 *announced that he had asked that it be reviewed to identify any concerns or areas that needed further consideration from a fraud perspective in accordance with the Fraud Act;*"
- 1.6 Following the announcement by the Monitoring Officer at the Extraordinary Council meeting, further consideration was given by officers as to the mechanisms and approach that could be taken to further investigate issues arising from RIPI2 which would encompass screening for fraud. Officers determined that it would be appropriate to screen for any concerns of 'wrong doing' (including fraud) by way of an externally commissioned forensic investigation. This was based on capacity, expertise and independence considerations, which led to the appointment of Kroll Associates 'Kroll' to lead this investigation as detailed below.

- 1.7 Periodic updates have been provided to Members on this investigation including on 13 October 2022 and at a subsequent meeting of the committee on 23 February 2023.

‘Two subsequent reports had paused progress on the original Penn Report. The first was the Report in the Public Interest (RIPI) on the Fairfield Halls refurbishment received from the External Auditor in February 2022. The second was the awaited report from KrollThe investigation to inform the outcome of the Kroll Report was complex and involved requests for information from many of the people involved at the time. The Council was pushing hard for the final report, but similarly to the Penn Report, it would also need to go through a Maxwellisation process.

That Maxwellisation process has concluded, and Kroll have finalised their report as attached at **Exempt Appendix 2**.

2. INDEPENDENT INVESTIGATION: COMMISSIONING & TERMS OF REFERENCE

- 2.1 The independent investigation referred to above was commissioned in two stages under Director and Corporate Director delegated authority respectively. Due to the urgency and speed required to complete the investigation, the council utilised the Crown Commercial Services Framework RM6188 Lot 3 ‘Reactive Investigatory Services’ and under the guidance of the procurement function a ‘mini competition’ was run, compliant with the council’s Tenders & Contract Regulations, to select a supplier with the appropriate standing and expertise to complete a stage 1 ‘scope of investigation’ report which would report at a high level on the issues involved and a detailed plan to investigate matters. The stage 1 report was designed to form a go/no go stage/gateway and allowed officers to fully understand what a forensic investigation would entail. Kroll were appointed for this exercise at a cost of £38,000, their stage 1 report is appended at **Exempt Appendix 1**.
- 2.2 Following receipt of this report and further detailed consideration by officers , it was determined to accept Kroll’s proposal by way of a direct award from the Crown Commercial Services framework to complete a detailed stage 2 investigation at a cost of £271,775.00, comprising £252,510.00 in investigation costs and a further £19,265.00 in data room costs, for the stage 2 project. The award was on the grounds of urgency, confidentiality, and the specialism of the provider to provide the outcome required.

Scope of the Report into ‘Wrongdoing’

- 2.3 Specifically, Kroll’s professional advice was that in order for the exercise to have full value for the Council, that the investigation screened for ‘wrongdoing’

as a whole. For example, evidence obtained by Kroll during the course of their investigation might not meet the tests for offences under the Fraud Act 2006 in relation to those investigated but might demonstrate 'breach of fiduciary duty' in relation to key individuals which would lead to different avenues, considerations and remedies for the council, for example the offence of 'misconduct in public office'.

- 2.4 Accordingly, for those identified by Kroll as being key persons/key data custodians (50 in total) and invited for interview (and in certain cases Maxwellisation) the following high-level terms of reference/objectives were shared.

Fairfield Halls Kroll Independent Investigation: Terms of reference information

'The investigation by Kroll aims 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.

At the conclusion of the detailed investigation, Kroll will produce an evidence-based report that will conclude on these matters in line with the evidence gathered. The report will be used to support Croydon Council in its redress process surrounding events involving delivery of the Project'.

- 2.5 Methodology. The approach to the investigation methodology applied by Kroll comprised of 3 main strands.
- a) Electronic document review. Bearing in mind that most key individuals had left the Council a review of email data focussing on key events helped Kroll to put together a timeline, and decisions made in relation to the Project and identify the decision makers and individuals involved.
 - b) Fact finding interviews. In conjunction with the review of electronic documentation, 50 fact-finding interviews with relevant individuals were requested. Response rates varied in respect of former officers and Members which depended on their willingness to co-operate. Where this was not the case, Kroll was able to draw factual conclusions based on email communications and other documentation reviewed.
 - c) External research. Lastly external research was conducted by Kroll as required, for example to establish the existence of any undisclosed associations.
- 2.6 To help Members to understand the complexity and scale of this investigation and resources deployed it is helpful to note that a total 636GB amount of data was supplied to and collated by Kroll as part of their investigation above. This data in total comprised 2,072,412 documents/files for analysis. The scale of

this investigation may be considered to give assurance about its thoroughness and the degree of reliance that can be placed on its findings. Following analysis of the data above a total of 50 key individuals were invited to interview by Kroll as part of their investigation. Details of this are contained in their report.

Process of interviews, discovery and evidence reviewed

- 2.7 It was made clear in the invitation email and the terms of reference as above that the investigation was intended to build a better understanding of what had happened with the project (which had led to the failures identified in RIPI 2) and to produce an evidence-based report that could support the council in any follow up action deemed appropriate.
- 2.8 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. The 50 people who were invited for interview are listed at Appendix 16 of their report (Page 218)
- 2.9 In drafting their final report Kroll identified 14 key individuals named in their report to be afforded the right of reply by way of a Maxwellisation process. The Maxwellisation process commenced on the 17th February 2023 and concluded on the 3rd March 2023. 9 out of 14 individuals responded in some way to the Maxwellisation process.

3. Kroll Independent Investigation Findings Summary/Conclusions of report

A full copy of the Kroll report is contained in **Exempt Appendix 2**.

- 3.1 The Kroll report is 260 pages long and the main body of the report is an evidence-based chronology of the project from 2014 to 2020 setting out key events including evolution of Brick By Brick (BBB) and Croydon Council (LBC), involvement of contractors, advisers and consultants, the project structure and budget, contracting/legal risks and governance of the project and key milestones in the progress of the project.
- 3.2 The Kroll approach and evidence-based output of the report is considered to have met the Project Brief/Terms of Reference. The independent investigation report sets out clearly the Kroll conclusions, with no outstanding lines of enquiry identified and therefore the report is considered complete.
- 3.3 The detailed chronology and methodology of the Kroll report identifies who was involved and, to the extent it can be verified/documented/evidenced, what they knew at the time. Whilst the Executive Summary itself is 50 pages long, the key findings and summary of the report have been broken down by Kroll as follows:

- Early discussions around the need for the refurbishment and capital allocations
- LBC's council-owned company and its appointment to the Project
- Development of Project budget, scope and estimated completion date
- Governance of the Project
- Reporting to Cabinet / Council

4. Legal Considerations and Causes of Action

- 4.1 Although not intended to be an exhaustive list, some of the legal causes of actions or legal standards against which the conduct, behaviours and activities reported by Kroll could be assessed are set out in an accompanying report to this committee.

5. Surcharging (Sanction) Regime

- 5.1 Whilst this report is not intended to reopen a debate about other sanctions previously available in situations faced by Croydon post RIPI 1 & 2, it is helpful to consider that prior to 2000 where public funds had been unlawfully spent, or a loss caused to a local authority through misconduct, a surcharge could be applied, after referral to a court by the Audit Commission. This provision was withdrawn following the third report of the Committee on Standards in Public Life, published July 1997

6. Disciplinary Proceedings & Next Steps

- 6.1 As reported elsewhere generally all those named and criticised in the Kroll report have left the council and therefore remedies against individuals generally fall outside of the disciplinary process.

7. CONSULTATION

- 7.1 In earlier paragraphs of this report the Maxwellisation processes undertaken for the benefit of the interested parties are explained.

8. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

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

9. LEGAL CONSIDERATIONS

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

Approved by: Looqman Desai, Deputy Monitoring Officer

10. HUMAN RESOURCES IMPACT

10.1 The human resources considerations and impact are covered in the main body of the report.

Approved by: Dean Shoesmith, Chief People Officer 13/02/2023

11. EQUALITIES IMPACT

11.1 Under section 149 of the Equality Act 2010, the Council has a duty when exercising its functions to have “due regard” to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

11.2 “Due regard” is the regard that is appropriate in all the circumstances. The weight to be attached to each need is a matter for the Council. As long as the council is properly aware of the effects and has taken them into account, the duty is discharged.

11.3 There are no specific equalities impacts directly arising from this report.

Approved by: Dean Shoesmith, Chief People Officer 13/03/2023

12. DATA PROTECTION IMPLICATIONS

12.1 These are discussed in the body of the report. In addition, the following principles relating to the processing of data protection, as set out in the UK GDPR, are relevant. Personal data must be:

- 12.1.1 processed lawfully, fairly and in a transparent manner. Fairness involves a consideration of the reasonable expectations of the data subjects in relation to privacy, confidentiality and the processing of their personal data;
 - 12.1.2 collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
 - 12.1.3 adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed;
 - 12.1.4 accurate and, where necessary, kept up to date; and
 - 12.1.5 processed in a manner that ensures appropriate security of the personal data.
- 12.2 Processing of personal data is lawful if, among other reasons, it is “necessary for the performance of a task carried out in the public interest, or in the exercise of official authority vested in the controller”.
- 12.3 The Kroll report contains a significant amount of personal data concerning many individuals. Opinions can constitute personal data the same way as facts can. Opinions about others will usually constitute mixed personal data as they are inextricably the personal data of the individual expressing the opinion and the individual(s) the opinion is about.
- 12.4 The term ‘processing’ covers a very broad range of activities including the publication, or disclosure, of personal data.

Approved by: Dean Shoesmith, Chief People Officer 13/03/2023

CONTACT OFFICER: Katherine Kerswell, Chief Executive

APPENDICES TO THIS REPORT

Exempt Appendices:

Kroll Scoping Phase Report and Detailed Investigation Plan

Kroll Report: Review into the refurbishment of Fairfield Halls

BACKGROUND DOCUMENTS

None