

LONDON BOROUGH OF CROYDON

REPORT:	Appointments and Disciplinary Committee PART A	
DATE OF DECISION	9 December 2024	
REPORT TITLE:	Outcome of the referral of documents to the Metropolitan Police following historical financial mismanagement and governance failures and related matters	
CORPORATE DIRECTOR / DIRECTOR:	Katherine Kerswell, Chief Executive	
LEAD OFFICER:	Katherine Kerswell, Chief Executive	
LEAD MEMBER:	Executive Mayor Jason Perry	
CONTAINS EXEMPT INFORMATION? <i>(* See guidance)</i>	NO	Public/Part A
WARDS AFFECTED:	All	

1 SUMMARY OF REPORT

- 1.1 The report updates the Committee on the referral of various reports to the Metropolitan Police concerning the Council’s historical financial mismanagement and governance failures.
- 1.2 Having undertaken a forensic and extensive review of the information provided, and requested pre-investigative advice from the CPS, the Metropolitan Police have decided to take no further action at this stage.
- 1.3 The Police have concluded that the actions and/or inactions of elected Members and former officers did not meet the high evidence threshold set out in legal guidance for wilful neglect or misconduct, or abuse of the public’s trust to such a degree that the offence of misconduct in public office (MIPO) was capable of being made out.
- 1.4 It is recommended that the Council renew efforts to bring about lasting change by asking His Majesty’s Government to take appropriate action to improve accountability arrangements in local government.

- 1.5** The report also sets the consideration of the outcome of the Police referral in a broader accountability context and updates the Committee on its decision on referrals to the relevant professional bodies.
- 1.6** In an Exempt/Part B version of the report, confidential legal advice on the Council's response to the Police, an appraisal of potential alternative action the Council could consider and on related matters and next steps are discussed.

2 RECOMMENDATIONS

- 2.1** For the reasons set out in the report, the Committee is recommended to:
- 2.1.1 Note the outcome of referral of documents to the Metropolitan Police concerning the Council's historical financial mismanagement and governance failures;
- 2.1.2 Note the update on the referrals to relevant professional bodies;
- 2.1.3 Agree that the Executive Mayor writes again to the Government for lasting change in the accountability of elected officials and officers by asking the Government to take swift and appropriate action to improve those arrangements in local government; and
- 2.1.4 Note that confidential legal advice on the Council's response to the Metropolitan Police, on an appraisal of potential alternative action the Council could consider and on related matters and next steps are discussed in the Exempt/Part B version of the report.

3 REASONS FOR RECOMMENDATIONS

- 3.1** For the Committee to consider the outcome of the referral of documents to the Metropolitan Police and update on related matters.

4 BACKGROUND AND DETAILS

Police referral

- 4.1** On 23 March 2023, the Committee received the Kroll report: an independent, forensic and fact-based review, undertaken by Kroll Associates UK Limited of the circumstances and decision-making process concerning the refurbishment of Fairfield Halls and related matters (the project).
- 4.2** The aim of Kroll's investigation was to provide clarity over the probity and integrity of decision making around the project, the reasons for the cost overrun and late delivery, the governance failures and report on any indications of fraud, conflict of interest, potential breaches of fiduciary duty and any other wrongdoing.

- 4.3 Also at that meeting, the Committee took action to implement the following recommendation in the Richard Penn investigation report which was published by the Council on 24 February 2023:
- “Members are also requested to consider referring this initial investigatory report to the Metropolitan Police for assessment of any further action being warranted in regard to the handling of public money and conduct in public office.”*
- 4.4 The Committee agreed to refer various reports, including the Penn report and the Kroll report, to the Metropolitan Police and relevant professional bodies for their consideration as to whether any further action is warranted. The Committee was advised, that following referral, it would be a matter for the relevant professional body to consider taking disciplinary or regulatory action against former Members and officers who are members of, or otherwise regulated by, that professional body.
- 4.5 Having undertaken a forensic and extensive review of the information provided and requested pre-investigative advice from the CPS, the Police have decided to take no further action at this stage. The decision letter sent by the Police is attached at **Appendix 1**.
- 4.6 The Economic Crime Command of the Police completed a review and concluded that there was no evidence of false accounting or fraud.
- 4.7 A separate review was also conducted by the Special Enquiry Team (SET) which forms part of the Central Specialist Crime Command of the Police. SET consists of a team of skilled and experienced detectives who specialise in the assessment and investigation of matters which involve politically exposed individuals. SET considered the offence of Misconduct in Public Office (MIPO).
- 4.8 The main elements of MIPO which is a common law offence carrying a maximum sentence of life imprisonment are:
- a public officer acting as such;
 - wilfully neglects to perform his or her duty and/or wilfully misconducts himself or herself;
 - to such a degree as to amount to an abuse of the public’s trust in the office holder;
 - without reasonable excuse or justification.
- 4.9 SET concluded that the actions and/or inactions of former officers and Members did not meet the high evidential threshold set out in legal guidance for wilful neglect or misconduct, or abuse of the public’s trust to such a degree that the offence of MIPO was capable of being made out.
- 4.10 It is of note that the assessment conducted by the Police revealed potential wrongdoing, breaches of statutory duty and incompetence. That, of course, is a matter of public record already. The Police, however, consider these to be “collective failings as opposed to individual instances of MIPO”.
- 4.11 The Police have reassured the Council that:

“Our assessment was incredibly thorough, reflective of the public interest considerations this matter attracts. It highlighted significant evidential challenges in relation to proving the offence of MIPO”.

- 4.12 As well as evidential concerns, the Police response refers to a proportionate use of resources, the voluminous nature of the documentation and that had they undertaken an investigation “it would have the potential to last several years.”
- 4.13 In the Exempt/Part B version of the report confidential legal advice on the Council’s response to the Police, on an appraisal of potential alternative action the Council could consider and on related matters and next steps are discussed.
- 4.14 In this report, as it has linkages with the broader accountability and law reform debate set out below, the Committee is advised that the Law Commission published a report in December 2020 on MIPO, highlighting the problems, that the law is in need of reform and recommended that the current offence should be repealed and replaced with two statutory offences:
- 4.14.1 **an offence of corruption in public office:** which would apply where a public office holder knowingly uses or fails to use their public position or power for the purpose of achieving a benefit or detriment, where that behaviour would be considered seriously improper by a “reasonable person”. A defendant to this offence will have a defence if they can demonstrate that their conduct was, in all the circumstances, in the public interest; and
- 4.14.2 **an offence of breach of duty in public office:** which would apply where a public office holder is subject to and aware of a duty to prevent death or serious injury that arises only by virtue of the functions of the public office, they breach that duty, and in doing so are reckless as to the risk of death or serious injury.
- 4.15 In a Ministry of Justice (MoJ) report on the implementation of Law Commission recommendations (July 2023), on MIPO it is stated that “The Government is considering the Law Commission’s recommendations and will respond in due course”.
- 4.16 An enquiry has been submitted to the MoJ to ascertain whether the Government has responded to the Law Commission’s recommendations since July 2023. A response has not been received to date.

Professional body referrals

- 4.17 Following initial contact, referrals to professional bodies have been stayed pending the outcome of the review being conducted by the Police. This was necessary to avoid the risk of prejudicing that review and any potential action the Police may take. Therefore, to date no complaints have been made. However, as the Police have now concluded their review but, subject of course to the Council’s response to the outcome of the review, it is now possible and appropriate to progress the referrals to the professional bodies.

New accountability arrangements

- 4.18 On 23 March 2023, the Committee considered a report which sought to lay out the current landscape of accountability for local government and the options available to the Committee to ensure that the public interest had been properly considered and given its due weight and attention in relation to the historic issues of the Council. It also proposed recommendations for the consideration of the Committee to start the national debate on accountability in circumstances such as those in Croydon. Members were recommended to urge the government to put new arrangements in place so that residents in other local authorities are protected and spared the scale of costs and damage to services that have befallen Croydon Council, its staff and its residents.
- 4.19 The Committee agreed and resolved, among other things, that the Executive Mayor, as Committee chair, to write to the following:
- 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;
 - 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; and
 - 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.
- 4.20 The Executive Mayor sent letters to all of the above as well as the Chairman of the Local Government Association. The Executive Mayor's letter to the Secretary of State (which was in the same terms as the other letters) is attached at **Appendix 2**. The responses received to date are also attached at **Appendix 3**.
- 4.21 Although the scale of financial mismanagement and governance failures at Croydon Council was unprecedented at the time, similar though different examples of corporate failure reported by other councils in the intervening years only strengthens the need for the law reform and improvements the Council has steadfastly and publicly called for. This issue of accountability is still of considerable concern to the residents of Croydon and is regularly raised in public meetings. The Committee is, therefore, recommended to agree that the Executive Mayor writes to the Government renewing the Council's efforts to bring about lasting change by asking the Government to take appropriate action to improve accountability arrangements in local government.

5 ALTERNATIVE OPTIONS CONSIDERED

5.1 These are set out in the Exempt/Part B report.

6 CONSULTATION

6.1 Not applicable.

7 IMPLICATIONS

7.1 FINANCIAL IMPLICATIONS

7.1.1 These are no financial implications directly arising.

7.2 LEGAL IMPLICATIONS

7.2.1 The legal considerations and advice have been included in the main body of the report and in the Exempt/Part B report.

7.3 EQUALITIES IMPLICATIONS

7.3.1 There are no equalities impacts directly arising.

8 APPENDICES

8.1 **Appendix 1:** Decision letter sent by the Police

8.2 **Appendix 2:** The Executive Mayor's letter to the Secretary of State

8.3 **Appendix 3:** Responses to the Executive Mayor's letters

9 BACKGROUND DOCUMENTS

None.