

Commercial Governance Task Group

Pathway for Care: Summary of findings

Summary of findings in relation to Pathway for Care Limited (“Pathway” or “Company”)

Detailed findings can be found in the document headed “Commercial Governance Review 2018: Key Lines of Enquiry (KLOE)”, which is available on request from Democratic Services.

Summary

1. Overall the Task Group concludes that whilst there was some evidence of fulfilment under each of the identified key lines of inquiry (as listed in the document referred to above), the depth of analysis in many areas was too superficial, resulting in decision making not being strongly evidence based. For example, in authorising increased loan ceilings the evaluation of risk and achievability of future projections was not robust, with no apparent, objective analysis of the likely conversion rate of potential contracts in the pipeline.
2. The Task Group limited its review to the formal committee documentation relating to Pathway, the responses of members and officers to a consultation on a draft version of these findings and interviews with the then Leader of the Council (Cllr Broad), current s151 Officer (Jocelyn Convey) and Chief Executive (John Jory).
3. Therefore to enable focus on the key issues only, these findings relate to these sources of evidence, rather than being based on a review of the extensive array of other materials relating to Pathway, for example individual member correspondence from the period in question.

Business case

4. The Task Group considered that the business case which underpinned the project would have benefited from clearer, quantifiable targets and milestones and specific triggers for reporting against those milestones, particularly in respect of financial returns and conversion rate of prospective leads to agreed sales.
5. An agreed reporting process whereby any deviation from specified aspects of the business plan would be reported to the Executive Sub Committee would have greatly helped the Council to track progress and take a realistic rather than optimistic view of whether the Company was delivering against its objectives and future prospects.
6. The content and timing of updates from the Company appears to have been at the discretion of the Company rather than against delivery of success measures in an agreed timetable set by the Council. This resulted in the requests for significant additional funds coming as a surprise, following earlier positive growth assumptions.

Non-Executive Directors

7. The Group considers that the appointment of a Non-Executive Director was essential to provide independence and to recognise the risk associated with

potentially serious conflicts of interest for Directors of the Company who were also Council employees.

8. Whilst the initial approval to set up the Company recognised the important benefit of having a Non-Executive Director, the Executive did not specify this as a requirement to be delivered within a specific timetable. The absence of a clear timeline and reporting mechanism meant that implementation was able to slip with no clear plan for delivery. Members reported that repeated requests had been made for such a Director to be appointed, for example by the Executive Sub Committee on 17 February 2017, which asked for a further report to be brought back to consider options for appointment of a NED. However this report was not subsequently brought.
9. The Group recognises the inherent conflict of interest in officers (or members) holding a role as a Company Director. They conclude that appointment as a Director should be skills based and that although each case should be considered individually there should be a strong presumption against any of the Council's statutory post holders (Monitoring Officer, s151 Officer and Head of Paid Service) holding a Directorship.

Member engagement

10. Informal member seminars were used to raise awareness and gain broad Member buy in to the concept behind the Company; these were felt to be helpful at the time but the Task Group is not aware of any formal notes or recordings of these sessions, or responses provided systematically to questions raised at these seminars, which meant that the content of these sessions was later open to dispute.
11. Following Member pressure, the Company was discussed at the Overview & Scrutiny Committee in April 2017. Advance questions were called for, and responses provided, although many responses were not provided on grounds of commercial confidentiality. Similarly, reference was made by a number of members to a general lack of responsiveness during the period in question and in the provision of detailed information in response to questions raised, thus hindering objective challenge to test the projections and assumptions about achievability of future growth at the time. This largely reinforces the conclusions reached from the formal committee documentation.
12. The call-in in November 2017 demonstrated that the Council's formal constitutional arrangements for questioning the process by which the Executive reaches its decisions were in place and capable of implementation. The outcome of 'no further action' endorsed the process by which the Executive's decision to increase the loan facility to £1.1m had been reached. Although not the purpose of the call-in procedure, it did also provide some opportunity for wider member discussion of the rationale for this key decision.
13. However, the fact that the Overview & Scrutiny Committee called for this review of the governance of commercial projects suggests that the wider scrutiny function on the face of it did not resolve issues effectively. Specifically, that proactive establishment of good governance at the outset of a commercial enterprise is felt to

be far more effective than the ability to review decisions after concerns have been raised.

Financial transactions and controls

14. A review of the financial transactions shows a number of shortcomings in terms of financial controls:
 - a. For the first seven months of operation, despite the Executive having approved in principle a loan of £350,000 to be advanced to the Company under a loan agreement, rather than establishing a separate loan account funds were instead advanced from the CPDF. Further, for a period these funds were paid directly to one of the Company's suppliers (which was also a company related to the Company's minority shareholder) rather than being advanced to the Company.
 - b. Despite a loan agreement then being authorised no evidence has been found for this loan agreement being formally put in place between the Council and the Company for the following five months, ie until 12 months after the first payment of funds.
 - c. At times the total accumulated payments from the Council to the Company exceeded the authorised loan limits, by up to £166,000.
 - d. Successive advances of funds from the Council to the company were made, on some occasions, within days of each other. This reflected a lack of robust understanding of the financial position and the short term cashflow needs of the Company.
 - e. Even after the initial CPDF payments had been regularised, further advances were made from the CPDF, on top of the approved loan, under delegated authority.
15. The reports on progress to the Executive read optimistically and would have benefited from a comprehensive analysis of the cash payment profile, income and costs, measured against the business plan separating the views of the Company from the opinion of Council officers
16. The Task Group recognises that steps have been introduced by the current S151 Officer, who was not employed by the Council during the period when the initial transactions highlighted above occurred, to improve financial processes, and the Task Group supports the further embedding of these improved processes.

Consultation on the draft Findings

17. An initial draft of these findings based only on a review of documentary evidence was circulated to all members and officers involved in the Pathway arrangements.
18. This led to additional input (written and verbal) and documentary evidence. This further input has been very helpful and has reinforced the Group's conclusions. In particular, the following points have been highlighted:
 - a. The potentially restrictive nature of a corporate structure, especially one involving a minority shareholder.

- b. The need for strong governance to be implemented at outset and maintained, in particular to avoid an over reliance on informal communication within a small circle of Members and Officers as opposed to formal reporting through properly constituted committees
 - c. A lack of evidenced challenge of company forecasts and projections and therefore an acceptance of the company's projections, which did not come to fruition.
 - d. The risk of conflicts of interest (actual and/or perceived).
19. In discussing the relationship between commercial ventures and the Overview & Scrutiny Committee, there was discussion as to whether the use of the call-in procedure in November 2017 might have prejudiced the Company's commercial success. The Task Group did not receive any evidence to suggest that this was the case.

Conclusion

20. The Task Group has not conducted a forensic review of the decision making and transactions outlined above, its focus to date has been to learn key lessons for the future governance of the Council's commercial entities, as per its Scope.
21. If the Executive and/or Overview & Scrutiny were of the view that such a forensic review would be of benefit, the Task Group would be willing to oversee this. Members should be mindful of the significant level of resource which would be needed to conduct such a detailed review.
22. The Task Group has concluded that the best means of improving governance of commercial activities is the adoption of a Commercial Governance Framework. This would serve as a basis for future working (based on the key lines of enquiry informing this review), ensuring that best practice guides future commercial projects.
23. This Framework consists of a checklist against which the setup of any future commercial entity would need to be measured, to ensure that all relevant points are addressed at the outset. The Framework proposed for adoption aims to address the key points arising from the evidence provided in relation to Pathway, outlined above.

Commercial Governance Task Group

February 2019