



Reigate & Banstead
BOROUGH COUNCIL
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REPORT OF:	HEAD OF CORPORATE POLICY & PERFORMANCE
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TO:	HEALTH & WELLBEING EXECUTIVE SUB COMMITTEE
DATE:	15 June 2017
EXECUTIVE MEMBER:	COUNCILLOR V.W. BROAD

KEY DECISION REQUIRED:	YES
WARD (S) AFFECTED:	ALL

SUBJECT:	PATHWAY FOR CARE: LOAN AND RESOURCE AGREEMENTS
RECOMMENDATIONS:	
<p>That the</p> <p>(i) Loan and Draw Down Agreement between the Council and Pathway for Care, as presented in the exempt Part 2 section of the agenda, be approved including the increased loan ceiling; and</p> <p>(ii) Resourcing Agreement between the Council and Pathway for Care, presented in the exempt Part 2 section of the agenda, be approved.</p>	
REASONS FOR RECOMMENDATIONS:	
<p>The agreements are important documents for the governance of Pathway for Care, and for the Council as majority shareholder.</p>	
EXECUTIVE SUMMARY:	
<p>In July 2016, the Executive agreed to form a Health and Social Care company known as Pathway for Care Limited. The company was officially incorporated on 22 August 2016.</p> <p>The Shareholder function of the Council is primarily executed through the Health & Wellbeing Executive Sub Committee. The Sub Committee remit is to undertake all functions of the Council as majority shareholder under the Company Act 2006. This includes approval of a range of documents required to support the company.</p> <p>A Loan and Draw Down Agreement and Resourcing Agreement, between the Council and Pathway for Care, are set out in the exempt Part 2 part of the agenda for approval. These set out the detailed arrangements for lending to the company and the provision of other (non-financial) resources.</p>	

Recommendation (i) is subject to approval by the Executive.
The Executive Sub Committee has authority to approve recommendation (ii).

STATUTORY POWERS

1. A local Authority is able to establish a Local Authority Trading Company ('LATC') through the powers in section 95 of the Local Government Act 2003. A Local Authority is permitted to trade in anything that it is authorised to do under its ordinary functions.
2. Under section 1 of the Localism Act 2011 local authorities now have a general power that enables them to do anything that a private individual is entitled to do, as long as it is not expressly prohibited by other legislation. Section 4 of the same Act directs that anything which is done for a purely commercial purpose should be done through a company. As the company operates for purely commercial purposes and may operate outside borough boundaries, this is the relevant power.
3. The Company would be a controlled company as defined in the Local Government and Housing Act 1989 as it is a subsidiary company of a local authority and as such the majority shareholder (the Council) has ultimate control over the activities and operational matters of the Company.

BACKGROUND

4. On 14 July 2016, the Executive agreed to form a Health and Social Care company known as Pathway for Care Limited. The company was officially incorporated on 22 August 2016.
5. A significant amount of work has been undertaken to move from incorporation to becoming an operational company, including significant policy and procedural work relating to the regulated environment of the health and social care sector essential to achieve CQC (Care Quality Commission) registration.

COMPANY GOVERNANCE

6. The Council as majority shareholder has ultimate control over the Company. It controls the company in a variety of ways; the appointment of directors, provision of funding and the Articles of Association.
7. The Board of Directors are responsible for delivery of the expected outcomes within the Business Plan. They have oversight of the performance, financial and operational management of the Company within the parameters agreed with the Shareholder.
8. The Shareholder function of the Council is primarily executed through the Health & Wellbeing Executive Sub Committee.

Health & Wellbeing Executive Sub Committee

9. The terms of reference for the Health & Wellbeing Sub Committee were approved by the Executive on 14 July 2016, as part of the decisions to establish Pathway for Care.
10. The Sub Committee remit is to undertake all functions of the Council as majority shareholder under the Companies Act 2006. This includes approval of a range of documents required to support the company.
11. Many of these have already been approved by the Sub Committee (such as a shareholder's agreement) at its meeting on 13 February 2017. At this meeting, the Head of Legal Services was authorised to finalise the remaining documents, including the loan and draw down agreement and resourcing agreement.
12. In recognition of the importance of providing Members with updates on Pathway for Care, the finalised loan and draw down agreement and resourcing agreements are set out in the Exempt part 2 section of the agenda for agreement.

Loan and draw down facility agreement (Appendix 1 to the part 2 report)

13. The agreement sets out the arrangements for the Council to lend money to Pathway for Care.
14. The total amount of lending that may be provided as set out in the loan and draw down agreement in the exempt Part 2 section of the report. It should be noted that this is higher than the amount approved by the Executive in July 2016. All lending will be subject to a rate of interest to be agreed between the Council and Pathway for Care. The interest rate will be such that it complies with all legal and state aid requirements.
15. The agreement provides the parties with the right to cancel the agreement, providing sufficient notice and the arrangements for default procedures.
16. The agreement will supersede the letter of comfort, previously approved by the Executive Sub Committee, which provided interim arrangements for lending.

Resourcing agreement (Appendix 2 to the part 2 report)

17. This agreement sets out other (non-financial) resourcing that the Council may provide for Pathway for Care.
18. Under the agreement the Council acts as provider of a range of services to Pathway for Care, the purchaser. The services include accommodation, telephony and internet.
19. Provision is also made for the Council to provide staff to support Pathway for Care. This can be extended to secondment where both parties agree.
20. The agreement covers all standard contractual arrangements, including payment, disputes, insurance and liabilities.

OPTIONS

21. The Executive Sub Committee has the option of agreeing each of the documents identified above or asking Officers to review them further and present them to a future meeting taking on board any comments at the meeting.
22. A further option identified is that the Sub Committee offer their comments on the draft documents and authorise the Head of Legal Services to agree/finalise the documents taking on board the comments of the Sub Committee.

LEGAL IMPLICATIONS

23. The agreements are legal documents, designed to protect the Council's position.
24. Legal support was provided by Bevan Brittan in drafting the agreements, utilising their considerable skills and experience in drafting similar agreements for other local authority owned companies.

FINANCIAL IMPLICATIONS

25. The financial implications and procedures are set out in detail in the agreements, as attached in the appendices in the Exempt part 2 section of the agenda.

EQUALITIES IMPLICATIONS

26. There are no equalities implications arising from this report.

COMMUNICATION IMPLICATIONS

27. There are no equalities implications arising from this report.

RISK MANAGEMENT CONSIDERATIONS

28. The Council has strong risk management arrangements in place, including a strategic risk in relation to our financial planning and commercial operations.
29. Commercial activities are not risk free. As a result, lending to commercial entities is not risk free. However, the Council has control over the operation of Pathway for Care through our majority shareholding and appointment of Directors. Regular reports are provided to the Leader and Executive Members in relation to Pathway for Care.
30. Pathway for Care has developed a Business Plan (see separate agenda item) to manage the business well and deliver strong financial performance.

CONSULTATION

31. Consultation has been undertaken with the Directors of Pathway for Care to ensure the agreements are fit for purpose.

POLICY FRAMEWORK

32. There are no policy framework implications arising from this report.

Background Papers:

1. Report to Executive: 14 July 2016