

# **BOROUGH OF REIGATE AND BANSTEAD**

## **Overview and Scrutiny Committee 30th November 2017**

### **ADDENDUM TO AGENDA**

#### **Agenda Item 3**

##### **CALL-IN: PATHWAY FOR CARE (EXECUTIVE – 9 NOVEMBER 2017)**

The report to support the consideration of the Call-In of the Executive's decisions on 9<sup>th</sup> November 2017 in relation to the Loan and Draw Down Agreement for Pathway for Care was marked as 'To Follow' on the published agenda. This is now attached.

#### **PART 2 EXEMPT INFORMATION**

#### **Agenda Item 5**

##### **CALL-IN: PATHWAY FOR CARE (EXECUTIVE – 9 NOVEMBER 2017)**

Report attached.





<b>REPORT OF:</b>	HEAD OF CORPORATE POLICY AND PERFORMANCE
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<b>TO:</b>	OVERVIEW AND SCRUTINY COMMITTEE
<b>DATE:</b>	30 NOVEMBER 2017

<b>WARD (S) AFFECTED:</b>	N/A
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<b>SUBJECT:</b>	<b>CALL-IN: PATHWAY FOR CARE (EXECUTIVE DECISION – 9 NOVEMBER 2017)</b>
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**RECOMMENDATIONS:** To consider and review the Executive decisions in relation to the process for authorising the increased loan ceiling for the Pathway for Care and the delegation in relation to future updates to the Loan and Drawdown agreement and to decide whether:

- To note the information and evidence considered and to inform the Executive accordingly; or
- To report to the Executive with recommendations for reconsideration of the Executive's decision.

**SUMMARY:**

This report requests the Committee to consider and review the Executive decisions in relation to the process for authorising the increased loan ceiling for the Pathway for Care and the delegation in relation to future updates to the Loan and Drawdown agreement.

**STATUTORY POWERS**

1. The Overview and Scrutiny Committee has the power to Call In the decision of the Executive arising from the provisions of the Local Government Act 2000 and as specified within the Overview and Scrutiny Procedure Rules of the Constitution.
2. 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.
3. 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 outside borough boundaries, this is the relevant power.

## DECISION MAKING PROCESS AND CALL-IN

4. The Call-In requests that the Overview and Scrutiny Committee review the decision of the Executive of 9 November 2017 under Agenda Item 11, namely resolutions (i) and (ii) in relation to Pathway to Care.
5. The stated grounds for the Call-In are that the decision was not taken in accordance with the following elements of the Council's Constitution:
  - (i) Principle of Decision Making 14.2.4 ("a presumption in favour of openness")
  - (ii) Principle of Decision Making 14.2.5 ("clarity of aims and desired outcomes")
6. A copy of the Call-In request submitted accompanies this report as **Annex 1** (Signatures are redacted in the interests of fraud prevention) and the reasons for the Call In are set out below.
7. The process by which resolutions (i) and (ii) of Agenda Item 11 of the 9 November meeting of the Executive were arrived at is detailed below.

### Executive Health and Wellbeing Sub-Committee: 6 November 2017

8. At the meeting of the Executive Health and Wellbeing Sub-Committee on 6 November 2017, the Sub-Committee considered the Mid-Term Report and Next Phase Requirements of the Pathway for Care company, as part of Agenda Item 6. This item was conducted in private (excluding the press and public under Local Government Act 1972 - Section 100A(4)) to consider the Exempt Information regarding these matters.
9. The report to the Executive Health and Wellbeing Sub-Committee accompanies the report is set out at **Annex 1** to the report under the Part 2 Exempt business part of the Committee's agenda.
10. Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 - 28 Day Notices (both public and private) of the business to be transacted at the Sub Committee were published on the Council's website, the eMembers room and notified to Members by email on 9 October 2017.
11. The agenda for the meeting of the Sub Committee was published on 27 October 2017 providing the required 5 clear days notification of business to be transacted. The agenda contained an item in both Part 1 and Part 2 entitled:  
*"PATHWAY FOR CARE: MID TERM REPORT AND NEXT PHASE REQUIREMENTS"* and were marked as *"To Follow"*.
12. This information was provided on the Council's website and the eMembers room.
13. The reports for both Part 1 and Part 2 were provided to the Sub Committee in the form of an Addendum which was despatched by first class post and emailed to Members on Friday, 3 November 2017.
14. Two of the four decisions made by Sub Committee were Recommendations for consideration by the Executive as follows:
15. The Executive Health and Wellbeing Sub-Committee recommended that:
  - (i) the Section 151 Officer be authorised to increase the loan ceiling to Pathway for Care, as set out in the Exempt Part 2 section of the agenda; and

- (ii) the Head of Finance (Section 151 Officer) be delegated authority, in consultation with the Head of Legal, to amend the Loan and Draw Down Agreement between the Council and Pathway for Care within the approved loan ceiling.

16. The above recommendations are recorded in the Minutes of the Executive Health and Wellbeing Sub-Committee meeting of 6 November 2017, which accompanies this report as **Annex 2**.
17. The Schedule of Decisions following this meeting was published on 7 November 2017 with the deadline for Call in being 14 November 2017.
18. The Recommendations referred to above were despatched in an Addendum for consideration by the Executive on 9 November 2017 as detailed below.

**Executive: 9 November 2017**

19. At the meeting of the Executive on 9 November 2017, the Committee considered the report and recommendations of the Executive Health and Wellbeing Sub-Committee meeting of 6 November 2017 as part of Agenda Item 11.
20. The report to the Executive accompanies this report as **Annex 3**.
21. The 28 Day Notice of the business to be transacted at this meeting of the Executive was published on 10 October 2017 and was compliant with the Regulations. The agenda for the Executive was published on 31 October 2017 with the following item listed:  
*“PATHWAY FOR CARE” (To Follow)*  
*Report from the Health and Well Being Sub Committee meeting on 6 November 2017.*
22. The Addendum that contained the Recommendations document from the Sub Committee was despatched on Tuesday, 7 November 2017. The Executive, in accordance with the recommendations of the Executive Health and Wellbeing Sub-Committee, RESOLVED that:
  - (i) the Section 151 Officer be authorised to increase the loan ceiling to Pathway for Care, as set out in the Exempt Part 2 section of the Health and Well Being Executive Sub Committee’s agenda; and
  - (ii) the Head of Finance (Section 151 Officer) be delegated authority, in consultation with the Head of Legal, to amend the Loan and Draw Down Agreement between the Council and Pathway for Care within the approved loan ceiling.
23. An extract from the minutes of the Executive meeting of 9 November 2017 accompany this report as **Annex 4**.
24. The Schedule of Decisions arising from the Executive meeting were published on 14 November with a deadline for Call In on 21 November 2017.

## Call-In

25. A Call-In request was received on 20 November 2017 from Councillors M. Selby, S. Walsh, J. Ellacott, S. Parnall, J. Paul and R. Coad. Additional signatures were subsequently received from Councillors C. Stevens and R. Ashford.

26. The reasons for the Call In were stated as:

“Principle of Decision Making 14.2.4 (“a presumption in favour of openness”). The report setting out the proposals was released on the afternoon of 3<sup>rd</sup> November 2017, less than 72 hours prior to the Health & Wellbeing Sub-Committee meeting at which the matter was considered, and less than a week prior to the Executive meeting at which the substantive recommendations were to be approved. Indeed the report to the Sub-Committee was not formally included as an addendum to the subsequent Executive despite the materiality of the recommendation being made. Whilst some questions from members were answered ad hoc in the intervening period, most questions of substance were left unanswered prior to the decision being taken.

Principle of Decision Making 14.2.5 (“clarity of aims and desired outcomes”). The report setting out the proposal for the Council to materially increase the loan ceiling made reference to this representing “match funding” to an investment from a third party along with that third party “taking an ownership stake in the business [Pathway]”. No clarity was contained in the report of the amount of the match funding or the nature of the resulting ownership arrangements to justify the commitment of the additional lending.

Furthermore it has become apparent, subsequent to the decision being made, that there is an error in the dates setting out the financial forecast in the report, which risks undermining confidence in the report and decisions based on it.”

27. As noted in point 6, a copy of the Call-In notice is attached at **Annex 1**.

28. In accordance with the Council’s Constitution, an extraordinary meeting of the Overview and Scrutiny Committee was therefore convened to consider the Call-In, following consultation with the Chairman of the Committee.

## Call In Procedure

29. The Constitution indicates that a Call In should be used in exceptional circumstances where Members of the Council have evidence which suggests that the Executive did not take the decision in accordance with the principles set out in Article 14 (Decision Making).

30. The Proper Officer (i.e. the Chief Executive) shall call-in a decision for scrutiny by the Overview and Scrutiny Committee if so requested by written notice signed by any five Members of the Council stating the reasons for the call-in and requesting the attendance of any Member or Officer under Overview and Scrutiny Committee Procedure Rule 5.14.

31. The Chief Executive is then required to notify the decision-taker of the call-in and call a meeting of the Committee to be held on such date as he may determine, where possible after consultation with the Chairman of the Committee, and in any case within 15 working days of the decision to call-in.

32. If, having considered the decision, the Overview and Scrutiny Committee is still concerned about it, then it may

- refer it back to the Executive for reconsideration, setting out in writing the nature of its concerns; or
  - if the item is major or has significant public interest, refer the matter to full Council.
33. If referred to the Executive they shall then reconsider the decision, amending the decision or not, before adopting a final decision.
34. It is not considered that the call in reasons require this matter to be referred to Full Council as they relate to access to information issues only and the Executive's decision was within the Council's budget and policy framework.

### **Evidence to be received**

35. As requested by the Call In the following people have been invited to the meeting:
- The Leader of the Council;
  - Chief Executive

### **Procedure at the Meeting**

36. It is suggested that the following procedure be adopted for the consideration of the Call In. To hear evidence from the following:
- A nominated lead Councillor for the Call In: To indicate the reasons for the Call In.
  - The Leader of the Council, Councillor V. Broad: To put the rationale for the Executive decisions and to make a statement;
  - The Chief Executive to make a statement in relation to the process that was followed for the decisions made by the Executive.
37. There will be an opportunity for the Committee to seek points of clarification after each speaker before the matter is debated in open Committee.

### **The options open for the Committee**

38. On conclusion of the review the Committee has the following options:
- To note the information and evidence considered and to inform the Executive accordingly;
  - To report to the Executive with recommendations for reconsideration of the Executive's decision.
39. It is not considered that this matter meets the criteria for referral for debate in Council as they relate to access to information issues only and the Executive's decision was within the Council's budget and policy framework.

### **Timing of the Committee's review**

40. The Committee has no scope to defer the consideration of the Call In. The Constitution requires the Committee to draw a conclusion at this meeting of the Committee.

**Decisions outside the scope of the Committee's review**

41. The Committee is reminded that it is reviewing the process for the Executive decisions only and not undertaking wider scrutiny of the Council's relationship with the Pathway for Care company.

**ALL OTHER IMPLICATIONS: LEGAL, FINANCIAL AND EQUALITIES**

42. These were considered as part of the report to the Executive.

**Background Papers:** Executive 9 November 2017 Agenda  
Health and Wellbeing Executive Sub Committee 6 November  
2017 Agenda



## Call for the call-in of two decisions of the Council's Executive of 9th November 2017

20th November 2017



Under Overview & Scrutiny Procedure Rule 5 the undersigned Members call for the decision of the Executive of 9 November 2017 under agenda item 11, namely resolutions (i) and (ii) in relation to Pathway for Care, be called in, on the grounds that it was not taken in accordance with:

- Principle of Decision Making 14.2.4 ("a presumption in favour of openness"). The report setting out the proposal was released on the afternoon of 3rd November 2017, less than 72 hours prior to the Health & Wellbeing Sub-Committee meeting at which the matter was considered, and less than a week prior to the Executive meeting at which the substantive recommendations were to be approved. Indeed the report to the Sub-Committee was not formally included as an addendum to the subsequent Executive despite the materiality of the recommendation being made. Whilst some questions from members were answered ad hoc in the intervening period, most questions of substance were left unanswered prior to the decision being taken.
- Principle of Decision Making 14.2.5 ("clarity of aims and desired outcomes"). The report setting out the proposal for the Council to materially increase the loan ceiling made reference to this representing "match funding" to an investment from a third party along with that third party "taking an ownership stake in the business [Pathway]". No clarity was contained in the report of the amount of the match funding or the nature of the resulting ownership arrangements to justify the commitment of the additional lending.


Furthermore it has become apparent subsequent to the decision being made that there is an error in the dates setting out the financial forecast in the report, which risks undermining confidence in the report and the decisions based on it.

In relation to this call in we request that the following Member and Officer attend the Overview & Scrutiny Committee meeting:

The Leader of the Council  
The Chief Executive

Name	Signature
MICHAEL SELBY	
S. WALSH	

## Call for the call-in of two decisions of the Council's Executive of 9th November 2017

Name	Signature
JULIAN ELLACOTT	
SIMON PARNALL	
JAMES PAUL	
RICHARD COAD	
CHRISTIAN STEVENSON	
ROD ASHGRD	

## **BOROUGH OF REIGATE AND BANSTEAD**

### **HEALTH AND WELL BEING SUB COMMITTEE**

Minutes of a meeting of the Health and Well Being Sub Committee held at the Town Hall, Reigate on 6 November 2017 at 2pm.

Present: Councillor V.W. Broad (Leader of the Council); Councillors Dr L.R. Hack and T. Schofield.

Also present: Councillors Mrs R. Absalom, Mrs R. Turner and S. Walsh.

#### **13. MINUTES**

**RESOLVED** that the minutes of the meeting held on 15 June 2017 be approved as a correct record and signed.

#### **14. APOLOGIES FOR ABSENCE**

**Sub Committee Member:** Councillor Mrs R. Mill.

**Non-Sub Committee Member:** Councillor M.J. Selby.

#### **15. DECLARATIONS OF INTEREST**

None.

#### **16. PATHWAY FOR CARE: MID TERM REPORT AND NEXT PHASE REQUIREMENTS**

It was noted that the Item had been withdrawn by the Chief Executive.

#### **17. ANY OTHER URGENT BUSINESS**

None.

#### **18. EXEMPT BUSINESS**

**RESOLVED** that members of the Press and public (except representatives of T7) be excluded from the meeting for the following items of business under Section 100A(4) of the Local Government Act 1972 on the grounds that:

(i) it involved the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act; and

(ii) the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

## **19. PATHWAY FOR CARE: MID TERM REPORT AND NEXT PHASE REQUIREMENTS**

Councillor V.W. Broad, Leader of the Council, introduced the report indicating that it had been provided in Part 2 of the Sub Committee's agenda as it contained exempt information about the commercial operations of Pathway for Care.

The Sub Committee received, at Annex 1 to its report, a Mid Term report on the operations of Pathway for Care and information that supported the progress being made by the Company against their Business Plan and projections for the future.

Members noted that the company had developed significant leads with a number of potential commissioners for Pathway for Care services, including West Sussex County Council. It was noted that those discussions had advanced to the stage that they were considering investing in the company and to take a share in the business.

In preparation for this Pathway for Care was investing to scale up its operations and deliver a higher volume of service. The Pathway Board had therefore identified the need for additional working capital investment to allow it to meet this increased volume.

The Board had requested an increase in the loan facility between Pathway for Care and the Council from the previously approved limit as set out in the Exempt report to the Sub Committee. This proposed increase would be subject to consideration by the Executive on 9 November 2017.

The Sub Committee were informed that to simplify the procedures going forward it was proposed to introduce a delegation to the Head of Finance (Section 151 Officer) to amend the Loan and Draw Down Agreement in future (within the approved loan ceiling).

The Leader and Chief Executive responded to Member questions about the Council's investment into Pathway for Care; prospective commissions being progressed; possible changes to the governance structure of the company and progress against the company's Business Plan.

The Chief Executive advised the Sub Committee that the Chairman of the Overview and Scrutiny Committee had requested that an Update on Pathway progress be provided to the Committee's next meeting in December 2017, which it was confirmed would be provided.

### **RECOMMENDED that:**

- (i) the Section 151 Officer be authorised to increase the loan ceiling to Pathway for Care, as set out in the Exempt Part 2 section of the agenda; and**
- (ii) the Head of Finance (Section 151 Officer) be delegated authority, in consultation with the Head of Legal, to amend the Loan and Draw Down Agreement between the Council and Pathway for Care within the approved loan ceiling.**

### **RESOLVED that the**

- (i) update on Pathway for Care performance and business plans be noted; and**
- (ii) negotiations proceeding with West Sussex County Council and the intention to determine appropriate models for company structure and arrangements for both investment and service delivery be noted.**

**Reasons for decision:** To ensure Councillors received updates on company activities. To ensure that the company had approved cash flow to deliver against the approved business plan. To ensure that the company structure remained fit for purpose as the business evolved.

**Alternative options:** Asking Officers to review the proposed loan agreement further and present them to a future meeting taking on board any comments at the meeting.

The meeting closed at 2.21 pm.



## EXECUTIVE – 9<sup>th</sup> NOVEMBER 2017

### RECOMMENDATION OF THE HEALTH AND WELL BEING EXECUTIVE SUB COMMITTEE

<b>Minute/Page No.</b>	<b>PATHWAY FOR CARE: MID TERM REPORT AND NEXT PHASE REQUIREMENTS</b>
Health and Well Being Executive Sub Committee 6 <sup>th</sup> November 2017 <b>19/214-5</b>	<p>Councillor V.W. Broad, Leader of the Council, introduced the report indicating that it had been provided in Part 2 of the Sub Committee's agenda as it contained exempt information about the commercial operations of Pathway for Care.</p> <p>The Sub Committee received, at Annex 1 to its report, a Mid Term report on the operations of Pathway for Care and information that supported the progress being made by the Company against their Business Plan and projections for the future.</p> <p>Members noted that the company had developed significant leads with a number of potential commissioners for Pathway for Care services, including West Sussex County Council. It was noted that those discussions had advanced to the stage that they were considering investing in the company and to take a share in the business.</p> <p>In preparation for this Pathway for Care was investing to scale up its operations and deliver a higher volume of service. The Pathway Board had therefore identified the need for additional working capital investment to allow it to meet this increased volume.</p> <p>The Board had requested an increase in the loan facility between Pathway for Care and the Council from the previously approved limit as set out in the Exempt report to the Sub Committee. This proposed increase would be subject to consideration by the Executive on 9 November 2017.</p> <p>The Sub Committee were informed that to simplify the procedures going forward it was proposed to introduce a delegation to the Head of Finance (Section 151 Officer) to amend the Loan and Draw Down Agreement in future (within the approved loan ceiling).</p> <p>The Leader and Chief Executive responded to Member questions about the Council's investment into Pathway for Care; prospective commissions being progressed; possible changes to the governance structure of the company and progress against the company's Business Plan.</p>

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Health and  
Well Being  
Executive Sub  
Committee  
6<sup>th</sup> November  
2017

**19/214-5**

The Chief Executive advised the Sub Committee that the Chairman of the Overview and Scrutiny Committee had requested that an Update on Pathway progress be provided to the Committee's next meeting in December 2017, which was confirmed would be provided.

**RECOMMENDED that:**

- (i) **the Section 151 Officer be authorised to increase the loan ceiling to Pathway for Care, as set out in the Exempt Part 2 section of the agenda; and**
- (ii) **the Head of Finance (Section 151 Officer) be delegated authority, in consultation with the Head of Legal, to amend the Loan and Draw Down Agreement between the Council and Pathway for Care within the approved loan ceiling.**

**RESOLVED** that the

- (i) update on Pathway for Care performance and business plans be noted; and
- (ii) negotiations proceeding with West Sussex County Council and the intention to determine appropriate models for company structure and arrangements for both investment and service delivery be noted.

**Reasons for decision:** To ensure Councillors received updates on company activities. To ensure that the company had approved cash flow to deliver against the approved business plan. To ensure that the company structure remained fit for purpose as the business evolved.

**Alternative options:** Asking Officers to review the proposed loan agreement further and present them to a future meeting taking on board any comments at the meeting.



## BOROUGH OF REIGATE AND BANSTEAD

### EXECUTIVE

Extract of minutes of a meeting of the Executive held at the Town Hall, Reigate on 9 November 2017.

Present: Councillors V.W. Broad (Leader); Dr L.R. Hack, Mrs N. Bramhall, K. Foreman, E. Humphreys, A. Horwood, G.J. Knight, Mrs R. Mill, Mrs R. Renton and T. Schofield.

Also present: Councillors Mrs R. Absalom, D. Allcard, R. Ashford, M. Blacker, Mrs J. Bray, J.C.S. Essex, N.D. Harrison, S.A. Kulka, M.J. Selby, B.A. Stead, J. Stephenson, Mrs R. Turner and C.T.H. Whinney.

#### **34. PATHWAY FOR CARE**

Councillor V.W. Broad, Leader of the Council, reported on the meeting of the Executive Sub Committee for Health and Wellbeing, held on 6 November 2017 as presented in the Addendum to the Executive.

The Sub Committee received a Mid Term report on the operations of Pathway for Care and information that supported the progress being made by the Company against their Business Plan and projections for the future.

Members noted that the company had developed significant leads with a number of potential commissioners for Pathway for Care services, including West Sussex County Council. It was noted that those discussions had advanced to the stage that they were considering investing in the company and to take a share in the business.

In preparation for this Pathway for Care was investing to scale up its operations and deliver a higher volume of service. The Pathway Board had therefore identified the need for additional working capital investment to allow it to meet this increased volume.

The Sub Committee had therefore requested an increase in the loan facility between Pathway for Care and the Council from the previously approved limit as set out in the Exempt report to the Sub Committee. Additionally the Sub Committee has recommended a simplification of the procedures going forward by the introduction of a delegation to the Head of Finance to amend the Loan and Draw Down Agreement in future (within the approved ceiling).

**RESOLVED** that:

- (i) the Section 151 Officer be authorised to increase the loan ceiling to Pathway for Care, as set out in the Exempt Part 2 section of the Health and Well Being Executive Sub Committee's agenda; and
- (i) the Head of Finance (Section 151 Officer) be delegated authority, in consultation with the Head of Legal, to amend the Loan and Draw Down Agreement between the Council and Pathway for Care within the approved loan ceiling.

**Reasons for decision:**

To ensure that the company had approved cash flow to deliver against the approved business plan. To ensure that the company structure remained fit for purpose as the business evolved.

**Alternative options:**

Requesting Officers to review the proposed loan agreement further and present them to a future meeting taking on board any comments at the meeting.