



Reigate & Banstead
BOROUGH COUNCIL
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SIGNED OFF BY	Commercial and Investment Director
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TO	Commercial Ventures Executive Sub-Committee
DATE	Thursday, 17 September 2020
EXECUTIVE MEMBER	Portfolio Holder for Investment and Companies

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Shareholder Actions - Pathway for Care Limited – September 2020
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RECOMMENDATIONS

1. The Commercial Ventures Executive Sub-Committee, as shareholder representative for Pathway for Care Limited (the Company), review the Company's Annual Report and Unaudited Financial Statements for the year ended 31 July 2019, as set out in the exempt Part 2 section of this agenda, and request confirmation from Pathway for Care Limited that provision has been made for the repayment of the £1.1 million preference shares by April 2023;
2. To note the departure of John Jory as Director of the Company; and
3. The shareholder representative approve the appointment of a replacement for John Jory as Director of Pathway for Care Limited and authorise the appointment to be confirmed in writing to the Company as set out in the exempt Part 2 section of this agenda.

REASONS FOR RECOMMENDATIONS

1. The Commercial Ventures Executive Sub-Committee, as shareholder representative for Pathway for Care Limited (the Company), is asked to review the Company's Annual Report and Unaudited Financial Statements for the year ended 31 July 2019 and request confirmation from Pathway for Care Limited that provision has been made for

the repayment of the £1.1 million preference shares by April 2023, to evaluate the Company's financial performance; and

2. The shareholder representative is asked to approve the appointment of a replacement for John Jory as Director of Pathway for Care Limited and confirm this appointment in writing pursuant to the Shareholder Agreement between the Company and RBBC.

EXECUTIVE SUMMARY

The CVESC is required to consider the actions set out in Recommendations above in its capacity as shareholder representative for Pathway for Care Limited in order the Council meets its obligations as set out in the Shareholder Agreement between the Council and the Company and, on behalf of the Council, exercise its fiduciary duty owed to its rate and local tax payers.

The Commercial Ventures Executive Sub-Committee has authority to approve the above recommendations.

STATUTORY POWERS

1. Section 1 of the Localism Act 2011 gives local authorities a general power of competence to do anything that individuals generally may do, where this is not prohibited by other legislation. This includes the power to set up alternative delivery vehicles to exercise its powers and duties.
2. Section 4 of the Localism Act 2011 stipulates that where in the exercise of the general power a local authority acts for a purely commercial purpose, the authority must do so through a company.
3. Companies and the rights of shareholders are governed by the Companies Act 2006

BACKGROUND

4. The creation of PFC was authorised by the Executive on 14 July 2016. In April 2018, Fairhome Group PLC became the major shareholder in the company.
5. In September 2019, Fairhome Care plc sold their shareholding in the Company to Paul Green. The majority shareholding in the Company is now held by Transforming Healthcare Group Limited (THG) and a shareholder of THG is Paul Green.
6. The Council has the right to appoint one director to the board of the Company.
7. Following the dissolution of the Property Executive Sub-Committee and the Health and Wellbeing Executive Sub-Committee at its meeting on 30 May 2019, the Executive authorised the creation of a Commercial Ventures Executive Sub-Committee for the purpose of monitoring the performance of, and take decisions on, the Council's existing and potential commercial ventures and other investments. This includes undertaking all functions of the Council as a shareholder under the Companies Act 2006 in relation to those companies or partnerships owned, or part owned, by the Council, except as otherwise specified.

8. In the Commercial Ventures Executive Sub-Committee’s capacity as shareholder representative, there is no fiduciary duty on them as individuals save for the fact that they represent the Council and owe responsibilities back to the Council to demonstrate that they act reasonably in carrying out their duties as shareholder representative. In the ordinary course of events, shareholders would be entitled to rely on and trust the information provided by the directors of the Company.

OPTIONS

- Option 1:** In reviewing the accounts pursuant to Recommendation (1), the Commercial Ventures Executive Sub-Committee should acknowledge receipt of Pathway for Care Limited’s Annual Report and Unaudited Financial Statements for the year ended 31 July 2019 and request confirmation from Pathway for Care Limited that provision has been and is being made for the repayment of the £1.1 million preference shares by April 2023 and approve Recommendations (2) and (3) in this report. This is the recommended option to ensure the Council meets the requirements of the Articles of Association and the Shareholder Agreement and the Council’s fiduciary duty.
- Option 2:** Approve all of the Recommendations above without further enquiry. This is not the recommended option as the Council should be satisfied that provision has been and is being made for the repayment of the £1.1 million preference shares by April 2023.
- Option 3:** Do not approve the Recommendations. This is not the recommended option as the Council is required to appoint a Director to the Company by the Articles of Association and the Shareholder Agreement.

LEGAL IMPLICATIONS

9. Section 1 of the Localism Act 2011 provides local authorities with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the ‘general power of competence’. A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others; ie this includes the setting up of companies as alternative delivery vehicles to exercise its powers and duties. In exercising this power, a local authority is still subject to its general duties (such as the fiduciary duty it owes to its rate and local tax payers and to the public law requirements to exercise the general power of competence for a proper purpose).

FINANCIAL IMPLICATIONS

10. This report does not have any direct financial implications for the Council. The Council’s company investments are reported in its annual statement of accounts.

EQUALITIES IMPLICATIONS

11. The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;

- Advance equality of opportunity between people who share those protected characteristics and people who do not;
- Foster good relations between people who share those characteristics and people who do not.

12. The Commercial Ventures Executive Sub-Committee should therefore ensure that it has regard for these duties by considering them through the course of its work.

COMMUNICATION IMPLICATIONS

13. There are no direct communication implications arising from the recommendations of this report. However, as identified in the Commercial Governance Framework, the Commercial Ventures Executive Sub-Committee should have regard for the Local Authorities (Companies) Order 1995, which sets out the rights for authorities and individual Members to receive company specific information.

RISK MANAGEMENT CONSIDERATIONS

14. All commercial ventures and investment activities contain an element of risk, and the Commercial Ventures Executive Sub-Committee should consider these as part of the decision making process for any decisions relating to commercial ventures and investment activities.

HUMAN RESOURCE IMPLICATIONS

15. Where Council Officers are appointed as directors, it should be noted that this has resource implications.

BACKGROUND PAPERS

None.