

BOROUGH OF REIGATE AND BANSTEAD

OVERVIEW AND SCRUTINY COMMITTEE

Minutes of a meeting of the Overview and Scrutiny Committee held at the Town Hall, Reigate on Thursday, 15 March 2018 at 7.30 p.m.

Present: Councillors Mr B. Stead (Chairman), Mrs R. Absalom, Mr R. Ashford, Mr M. Blacker, Mr M. Brunt, Mr R. Coad, Mr G. Curry, Mr J. Essex, Mr N. Harrison, Mr R. Mantle, Mr S. Parnall, Mr D. Powell, Mrs D. Ross-Tomlin, Mr J. Stephenson and Mrs R. Turner.

Also present: Councillors Mrs J. Bray, Mr J. Ellacott*, Mr K. Foreman, Dr. L. Hack, Mr J. King*, Mr G. Knight, Mrs R. Mill, and Mr S. Walsh.

** Part Meeting Only*

54. MINUTES

RESOLVED that the Minutes of the meeting held on 15 February 2018 be approved as a correct record.

55. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Committee Members: None

Others: None

56. DECLARATIONS OF INTEREST

No declarations of interest were made.

57. QUARTERLY PERFORMANCE REPORT (Q3 OCTOBER – DECEMBER 2017)

The Committee received a report that detailed the major variances on performance in relation to the Council's Key Performance Indicators, Revenue Budget Monitoring, Capital Budget Monitoring and Internal Audit, and provided updates to Key Performance Indicators and Strategic Risks for 2018/19.

There were two advance questions received in relation to this item, responses to which had been circulated to the members of the committee and were tabled at the meeting.

The Committee considered and discussed the report and the advance questions received. There were a number of questions and comments on the report and advance questions, relating to the following topics:

- **The reporting of loans to trading companies.** It was clarified that information on the balances of loans to trading companies established by the Council would be included in future quarterly performance reports.
- **Other payments between the Council and trading companies.** Clarification was requested regarding previous and outstanding payments to trading companies established by the Council. It was confirmed that previous payments were included in the loan balances where applicable, and that there were a number of outstanding trading items between the Council and trading companies, but no additional loans.
- **The reduction in income from land charges.** The committee was advised that the reduction in land charges was considered to be as a result of the introduction of private competition, following changes in legislation. It was confirmed that the Council sought to provide a competitive land charges service.
- **The recovery of costs for the Merstham regeneration project from Surrey County Council.** It was confirmed that the full identified overspend was expected to be recovered from Surrey County Council.
- **Risk around increased demand for housing, homelessness and welfare activities.** It was identified that there had been an increase in demand in a number of areas relating to the implementation of welfare reforms. It was confirmed that this had led to an increase in costs for the Council, and that the council had received an additional grant from central government, and that both had been accounted for in the budget.
- **Uncertainty around future access to the Public Works Loan Board.** A query was raised regarding if a future loss of access to funding from the Public Works Loan Board would be an obstacle to the Council's activities. The Committee was advised that the Council continued to have access at present, and that there were competitive alternatives available to the Council if they became required.
- **The review process for revising KPIs.** The Committee was advised that KPIs were reviewed by relevant service managers, and then considered by the management team. It was identified that there were also a range of other operational indicators, but that the KPIs were subject to additional monitoring due to the potential adverse consequences of underperformance in the associated areas.
- **Data Protection and General Data Protection Regulations (GDPR).** It was confirmed that the Council has employed a data protection expert to support its compliance activities, and that it was satisfied that it was sufficiently compliant with the requirements of the new data protection regulations. It was noted that this was an important area of responsibility for the Council. The Chairman suggested that a report on the actions being implemented to support the new requirements would be of interest to Members.
- **Cyber security.** A query was raised regarding the Council's plans in the event of exposure of its systems to ransomware or other malign material.

The committee was advised that the Council had strong security procedures in place and maintained secure backups and that additional details could be provided following the meeting, if requested.

RESOLVED:

- i) That the quarterly performance report, revised Key Performance Indicators and identified Strategic Risks for 2018/19 be noted.
- ii) That the comments of the Overview and Scrutiny Committee be noted.
- iii) No additional observations be made to the Executive.

58. EXECUTIVE

It was reported that there were no items arising from the Executive that might be subject to the 'call-in' procedure in accordance with the provisions of the Overview and Scrutiny Procedure Rules.

59. ANY OTHER URGENT BUSINESS

There was no other urgent business.

60. EXEMPT BUSINESS

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

- (i) it involves 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 outweighs the public interest in disclosing the information.

61. PATHWAY FOR CARE – NEXT STEPS

The Committee considered proposals including exempt information regarding the next steps for the Pathway for Care company. The Chairman invited Cllr Mrs R. Mill, Executive Member for Leisure and Wellbeing, to introduce the report.

Councillor Mill introduced the report and noted that the Executive would be considering the recommendations for the next steps for the Pathway for Care company at the 29 March meeting of the Executive. The committee was advised that, due to the urgency requirements around the decision, and the consideration of the matter by the Committee at the evening's meeting, the Call-In procedure was disapplied for the decision. The Committee's attention was drawn to the importance of supporting those vulnerable persons who depended upon services provided by Pathway for Care.

Councillor Mill noted that the Executive would welcome the observations and insight of the Overview and Scrutiny Committee in its role as a critical friend, and thanked Members for their efforts in considering the report.

There were nineteen questions received in advance of the meeting in relation to the item, responses to which were tabled at the meeting.

There were a number of questions and comments on the report and the questions received, relating to the following topics:

- **Independent valuation of the company.** The committee was advised that an independent valuation of the company had last been undertaken in 2016, but that a new valuation was considered to provide little benefit, as the company's current situation meant that it was not positioned to conduct a wider search of the market for alternative investors. It was confirmed that the Council had obtained external legal advice identifying the requirements for assuring that the transactions provided value for money.
- **Potential conflicts of interest.** A query was raised regarding potential conflicts of interest for the Leader and Chief Executive of the Council regarding their connections to the company and the Council. It was identified that one of the potential investors was known to the Leader of the Council in a personal capacity and that the monitoring officer had been advised of this. It was identified that any interest resulting from this was non-pecuniary and that the Leader had not participated in any negotiations between the investor, Pathway for Care, and the Council. It was identified that point 32 of the draft report to the Executive should be corrected to refer to consultation with the Deputy Leader rather than the Leader, and that the report would similarly be amended to identify that the Deputy Leader be mandated to act as the Council's shareholder representative, rather than the Leader.

The committee was advised that the Chief Executive of the Council was a director of Pathway for Care, as nominated by the Council in its role as shareholder, and that he had therefore been advised by the monitoring officer not to be present at the meeting to avoid any potential conflicts of interest in providing advice. It was noted that the Council had arrived at its position regarding the investment proposals independently to the company and its directors. A number of Members expressed concern that a senior officer may face conflicts such as this and suggested that this be considered when appointing Directors to any companies in future.

- **Company losses versus business projections.** The Committee was advised that the additional losses reported by the company were primarily due to the differences in timing of income from the company's supported living property, and costs incurred in pursuit of a significant deal which did not materialise. It was confirmed that the figures provided in the report were an accurate representation of the financial context.
- **The company's current financial situation.** A query was raised regarding the company's current finances and balance sheet. It was identified that the company's management accounts up to 31 January were available, and that it was expected that the updated financial position would be available to inform the decision of the Executive. This information was identified to include reference to projected future company revenues. It was noted that this information would form part of the due diligence process conducted by

the potential investors. It was confirmed that the company was not considered to be trading insolvently.

- **Information regarding the previously pursued significant deal.** The committee was advised that the deal previously pursued by Pathway had sought to secure a sizable contract to provide services, which would have secured significant income for the company. The committee was advised that agreement had been reached on a number of aspects of the deal, and that the initial financial prospects had appeared positive, but that at the end of November 2017 the offer made by the potential commissioner was not acceptable, as it would have represented significant financial detriment to the company. Members were advised that the date for this would require confirmation (*it was subsequently confirmed that this had been noted by the board of Pathway for Care on 11 December 2017*). It was identified that, following this outcome, the directors of the company had considered the options available and had then decided in January 2018 to seek alternative investors. It was identified that the costs of pursuing the deal had largely originated from staff costs and the loss of income from other sources which might otherwise have been secured.
- **The assets of the Pathway for Care company.** Members were advised that the company had a low level of material assets, and that there was therefore minimal prospect of the Council obtaining a return on its loan in the event that additional investment into the company was not secured. It was identified, however, that the company possessed a number of intangible assets, in the form of its existing relationships and market position, which were of potentially significant value to investors.
- **The potential provision of an additional £15,000 loan to Pathway Digital.** It was identified that whilst Member opinion was understood to oppose providing significant further investment into the company, the figure identified was recommended to be made available as a contingency to allow for the event that arrangements with the potential investors were not finalised simultaneously. Members were advised that it was judged that allowing for this contingency would best support the interests of the Council in obtaining a return on its existing investment and avoid a disruption of services to individuals depending upon the company's services.
- **Conclusion of negotiations with the potential investors.** Members were advised that negotiations regarding the details of the proposed arrangements were ongoing, with support from external legal counsel. It was identified that there were a number of points remaining to be agreed, but that both potential investors were understood to be interested in and positioned to progress swiftly.
- **Council directors on the restructured companies.** It was confirmed that any directors of the companies appointed by the Council would not receive additional remuneration for their roles as a director. The Committee was advised that the Council would continue to appoint a director to the Pathway for Care company, and that negotiations regarding director arrangements for the digital monitoring company were ongoing.
- **The proposed redeemable preference shares in Pathway for Care.** Members were advised that the preference shares were expected to have a value of £1,100,000, in line with the debt to the Council they would be

exchanged for. The preference shares were identified to be redeemable on the fifth anniversary of the completion of any deal. Additional details of the shares regarding any additional redemption options and similar matters were confirmed to be being considered as part of the ongoing negotiations. It was raised that preference shares were considered to be a lower priority charge on the company in the case of insolvency, but that both were vulnerable in such circumstances, and that it was judged that the preference shares presented a much improved prospect of return to the Council than the existing loan did were the company not to receive additional investment. It was noted the Council would also retain class B shares in the Pathway for Care company, and that the shares were expected to provide a dividend.

- **Safeguarding the Council's interest in the companies.** A query was raised regarding what actions the Council was taking to safeguard its interest in the companies, and ensure that actions were not taken which would provide value to the companies or investors at the expense of the Council. The Committee was advised that the Council was considering safeguarding provisions as part of the negotiations, and that details of agreed safeguards would be available to the Executive.

The Committee was advised that whilst no investments were risk free, it was believed that the companies and investors were incentivised to behave in a fair manner towards the Council due to their business models benefiting from good relationships with local authorities, and had considerable experience and expertise in the relevant fields of business. It was identified that the restructured Pathway for Care company was expected to have a more significant asset base than at present, which would improve the security of the Council's investment, although it was noted that any assets might also be subject to charges from any lenders.

A query was raised regarding if the potential investment in the digital monitoring company might take the form of a loan. The Committee was advised that this was being considered as part of the ongoing negotiations, and that all available details would be confirmed for the Executive.

- **Accounting treatment and implications.** It was confirmed that the accounting treatment of all matters relating to the proposals would be conducted in line with requirements, and that this would follow the actions judged to best support the interests of the Council and its residents. It was confirmed that the Council's accounts would be subject to the usual External Audit process, and that it was expected that actions relating to the proposals would be noted as post balance sheet event for the 2017/18 accounts. It was not expected that the proposals would have a direct impact upon the revenue budget or services to residents. It was confirmed that tax advice had been obtained regarding the proposals. It was suggested that the accounting treatment be confirmed where possible for the Executive's consideration of the proposals.
- **Persons benefiting from the company's services.** Members were advised that there were a number of individuals either currently benefitting from, or scheduled to benefit from, the services provided by Pathway for Care. The Committee was advised that there was a greater number receiving some benefit, and a small number with much greater dependency upon the services.

- **Previous information provided to the Committee.** Members expressed some concern that previous updates to the Committee had presented an optimistic outlook for the company which had ultimately not been reflected in outcomes to date.
- **The Council's liabilities.** It was confirmed that the Council's shares in the proposed companies would not generate any additional liabilities. Members were advised that the proposals were not expected to present any significant increase in liability relative to the current position. There was potential for additional costs resulting from legal costs to complete the deals, but these were not considered to be significant relative to the other relevant factors. It was identified that there was the potential requirement to the Council to agree warranties and indemnities as part of the proposed arrangements, but that these were considered to present a low risk due to the short trading history of the company and due diligence work conducted to date. The Committee was advised that any risk would be balanced against the improved prospect for return of the Council's current investment and the latest available information provided for the Executive. It was identified that there were some potential additional liabilities to the Council in the event that no additional investment were secured or if the company were to cease trading.
- **The provision of the Committee's comments to the Executive.** Members of the Committee were keen to ensure that their observations were made available to the Executive to support the consideration of the item. It was confirmed that the observations would be made available, either accompanying the report or as an additional resource.

Following the consideration of these points, the Chairman asked if the Committee was able to make an overall observation on the proposed recommendations, but the Members of the Committee indicated that they did not consider the Committee to have sufficient information to definitively support a particular option prior to the confirmation of some of the outstanding details. Members did however indicate that the Council providing significant additional funding to Pathway for Care, or not pursuing a return on the Council's investment were not considered to be good options. It was therefore suggested that the proposed recommendations appeared to present the best of the available alternatives, but that this was subject to the confirmation of additional details.

A number of Members indicated that they believed that they had previously expressed concerns regarding the Council's involvement in Pathway for Care and were dissatisfied with the outcomes obtained.

A number of proposed motions were circulated to the Committee by the Vice Chairman. It was considered that the points raised in this document had largely been addressed in the discussion, with the exception of a suggestion that it was important that attention be paid to the lessons the Council could learn from its experiences with Pathway for Care. The Members of the Committee were therefore supportive of the principle that the Council act and consult with Members to consider the lessons learned from its experience with the company. Members highlighted the importance of information provision to all Members to support effective scrutiny and securing the mandate of the Council.

The Executive Member for Leisure and Wellbeing thanked the Committee for their observations and efforts, and thanked the supporting officers, and particularly the Head of Finance, for answering the Committee's questions. The Executive Member noted that the Executive would consider the observations of the Committee, including those summarised below and otherwise identified in these minutes:

- That the report should be updated to confirm that the negotiations were conducted in consultation with the Deputy Leader, rather than the Leader, and that the Deputy Leader, rather than the Leader, would be mandated to act as the shareholder representative for the actions identified.
- That the Executive should have the most up to date financial and general information available on the company and the proposals available to them to support their consideration.
- That the Executive should take account of, and have information on, the steps being taken to safeguard the Council's investment.
- That the Executive should take account of any liabilities incurred by the Council.
- That all associated actions by the Council should be fully and appropriately recorded as part of the accounting process.

RESOLVED that:

- (i) the Executive be thanked for inviting the Committee's pre-scrutiny of the Pathway for Care Next Steps draft report and for the Executive Member for Leisure and Well Being facilitating the Committee's review of that paper; and
- (ii) the Committee's observations be provided to the Executive for its consideration at its meeting on 29 March 2018 together with any further updates required to respond to the Committee's comments.

The meeting closed at 10.04 p.m.