

SCRUTINY MANAGEMENT PANEL

Minutes of the meeting of the Scrutiny Management Panel held on Friday, 21 September 2018 at 4.30 pm at the Civic Offices, Portsmouth

Present

Councillor Tom Wood (in the Chair)

Councillors Leo Madden
Simon Boshier
Ryan Brent
John Ferrett
George Fielding
Ian Lyon
Hugh Mason

5. Apologies for Absence (AI 1)

Councillor Tom Wood, Chair of the Panel, welcomed everyone to the meeting. He read out safety information about evacuation procedures and advised that the meeting was being live streamed. He invited Members and officers to introduce themselves which they then did.

The Chair advised that no apologies for absence had been received.

6. Declarations of Members' Interests (AI 2)

There were no declarations of Members' interests.

7. Call in of decision taken by Cabinet on 10 August 2018 in respect of item 4 on that agenda 'Victory Energy Supply Limited - Expert Review of Business Case' - (AI 3)

(TAKE IN REPORTS AND PAPERS)

The Chair advised that the process to be followed at the meeting had been circulated. One oral deputation request had been received from James Nicholson. The Chair invited him to make his deputation which he then did, speaking in favour of the item being referred back to Cabinet.

Three written representations had been received, from Professor Mark Button, Commander Simon Wallace Royal Navy (Rtd) and Mr Stephen Vick all in favour of the item being referred back to Cabinet. These had been circulated to members of the Panel in advance of the meeting. All three written representations were read out by the Senior Local Democracy Officer at the request of the Chair.

The full content of the deputation and written representations can be found at the following link

<https://livestream.com/accounts/14063785/SMP-21Sep2018>

Councillor Donna Jones as Lead Call-in Member was invited to present the reasons for calling in the decision. She first gave some background information stating that the Call-in request had been signed by some members of the Labour Group as well as by some members of the Conservative Group indicating that both opposition groups had a shared desire to call in the Cabinet decision.

She then outlined the specific reasons for the Call-in

- **Point 1 - Customer Acquisition Statements** At the Cabinet meeting, the Leader of the Council stated that, "PWC said 50k is far too many (customers) and should be reduced by half, back down to 25k". Cllr Jones said that this is a false statement and that PWC did not say this. It is a clear misrepresentation of the independent experts' report and demonstrates a failure to understand the key points. She said that 6.2(i) of the main report, page 52 of the Executive summary and the Baringa report all support her assertion. Consequently, she considered that the Leader using this point as a reason not to invest in the company is based on incorrect information.
- **Point 2 - Marketing Approach** At the Cabinet meeting, the Leader of the Council stated that "PWC and VESL have described this sales technique (door to door selling) as untried and untested"

Councillor Jones said that it is tried, tested and proved. She said that PWC confirm this in their report. The approach is new but achievable. PWC conclude that '*switching is still at an all-time high*', which will assist VESL. In the VESL presentation all members were made aware of a diagram which explained all the options open to VESL for marketing to attract customers. VESL can use any one of 11 features quoted at any time. PWC concluded under 6.1 of the report (bullet point 8 in the box) that:

Delivering the required level of acquisitions may require VESL to adapt its sales and marketing plan and use more proven sales channels. VESL should be well positioned to adapt quickly to a new approach, however, this may result in VESL's acquisition costs increasing and put downward pressure on margins.

Councillor Jones drew on several parts of the reports to support her assertions, page 52 of the Executive summary, page 55 number 1, point 2 paragraph 2, and page 38, 2.2 of Baringa's report.

- **Point 3 Investment Exposure** Councillor Jones said that the customer acquisition statement as stated by the Leader was not what was stated in the experts' report.

Councillor Jones said that at the Cabinet Meeting, the Leader stated that

'There's a possibility of a profit of £1.5m - £6m in year 5 or 6, and I think Chris you put it even later. The amount of money the council will have to lend VESL is £15m.'

Councillor Jones said that this is incorrect and said the Leader of the council has clearly misunderstood the key risk exposure. In the Section 151 officer's report it states on page 5 what the peak financial exposure for the council is forecast to be in year 2 which amounts to £6.5million. Beyond year 4, the company would start to return annual profits and by year 10 have achieved significant financial returns. In 1.13 of the report it states:

Taking the downside scenario of PWC and their advice to consider investment over 10 years (after repayment of the necessary up-front investment) would return circa £50million, representing both earnings of circa £27million and a customer book value of circa £18million.

She said that this statement from the report encapsulates the total financial risk to the council in PWC's downside scenario. She said it is important to note that £18.1 million is based on the PWC downside scenario. When all income to the council is added together it totals £50million.

Councillor Jones said that the Leader of the council had demonstrated an error of understanding, judgment and interpretation of the independent advice given in the section 151 officer's report. The total return to the council over a 10 year period is the basis upon which this decision should have been taken.

With regard to risk exposure, Councillor Jones said that comments the Cabinet made around risk were based on the VESL business case only and not on all of the information put before them in the report and highlighted by the Section 151 officer in his report. She said that the Cabinet failed to consider the other income streams that would be due to the council and also the company value which would be based on the customer book.

With regard to the four success factors referred to in the section 151 officer's report, the Leader said "I have not been able to be persuaded that there are any of those four things in place."

Councillor Jones said that the section 151 officer confirmed that the independent expert reviews that have been undertaken all agreed that those things are in place. She said that the Leader influenced other members of the Cabinet to his view.

Councillor Jones referenced various parts of the reports to demonstrate that the opinion of the independent experts is clear and strong in relation to the senior management team, the agile business plan and robust risk management. She asked where contrary evidence that the Leader was relying on to base his comments and decisions could be found.

Councillor Jones then referred to comments made by Councillors Jeanette Smith, Darren Sanders and Matthew Winnington as quoted in the Call-in papers.

In conclusion she said that the Administration made a decision to wind up the energy company based on misleading or factually incorrect information.

The Chair next invited questions from the Panel and the following responses were received

- The legal adviser, Peter Baulf advised the Panel that a decision may be referred back to Cabinet for further consideration if the Panel on balance form the view that the Cabinet has received information in the course of reaching their decision and then have misinterpreted or misunderstood that information leading to them reaching a decision based on inaccurate information.
- In response to queries about wider issues the Chair asked that Members confine the decision on the call-in reasons already given in the documents.
- Councillor Jones said there was nothing in the documents to indicate that the prices to people in fuel poverty would increase if Cabinet had signed up to the Energy Company in spite of three members of the Cabinet stating that this might happen.
- PWC did not say the model was not achievable, just that more selling agents would be needed and some re-modelling and this had been accepted.

The Chair then invited Councillor Gerald Vernon-Jackson as Lead Cabinet Member to respond which he then did including the following comments.

- If there is additional information that Cabinet did not have and which they needed for that discussion, he would be very happy to look at it So far he said he had not heard anything to suggest that that was the case.
- Before the change in Administration, the energy company had been shrouded in secrecy. Since the Liberal Democrats had formed the Administration, they were trying to do things differently by holding meetings in open session and by arranging briefings for all Members. Members had been given the opportunity to question experts about the energy company; some Members had attended, others had not.
- The report made clear that there are risks and benefits and he considered it to be a judgment call as to where the balance of risk lies.
- Cabinet members disagreed with some of the sales methods outlined in the business plan and about who would be targeted. Cabinet members considered it to be a significant possibility that the outcome for some people on low incomes would be to increase their energy bills.
- He had business concerns as there would be a need to double the industry average in signing up new customers
- He had concerns also about the failure to assess the effect of price caps which could potentially have a negative impact.
- With regard to the marketing approach, he considered there to be a risk that the business case would not be achieved. He considered door to door selling to be unpopular with people. Basically 44,000 households would need to sign up in year one to break even.

- He considered that the risk is carried by PCC for a long time and is a gamble.
- He considered the risk exposure - based on the success of an enterprise that does not have any customers is a cause of concern.
- He had concerns about there being no minuted governance meetings that were open to members of the public and generally not enough information was publicly available
- He considered the matter was all about the interpretation of the information that had been provided.
- He believed that if the venture was a good one, that would be reflected in the number of interested parties should the company be put up for sale.

The Chair reminded Members not to stray into discussion about the original decision but to focus on the reasons given for the call-in ie whether the information had been inaccurate, incomplete ,or inadequate.

As some comments made by Councillors Sanders, Winnington and Smith at the Cabinet meeting had been specifically mentioned in the Call-in papers, an opportunity was given to those members who were able to attend the meeting today to comment.

Councillor Sanders included the following points

- In forming his view, he had not relied solely on the reports to Cabinet but had also based his views on a number of events and briefings. He was aware of VESL's place in the market and that it was a mid-range product and was not among the cheapest tariffs.
- He had considerably more information than had appeared in the papers before Cabinet and had taken his decision in that light.

Councillor Winnington included the following points

- He believed he had had complete information about who would be targeted and that the elderly and those in fuel poverty would be - among them.
- With regard to lower energy costs to residents, he had not seen anything to show that this would definitely be done. VESL said it was going for the mid- market option. The core principles were not about fuel poverty but to generate income for the council. Fuel poverty is an aside.
- With regard to paragraph 1.2 of the report, this sets out what they will do, but we already have that at PCC through LEAP which he sees in action through his day job.
- With regard to boilers, VESL could supply these, but many boilers are the responsibility of landlords so this would not affect those in fuel poverty.

- With regard to the mitigation stating that 80% purchase through the big 6 energy companies, many people in fuel poverty will not be with the big 6..
 - Additionally, if a property becomes empty, the energy company would go to VESL and this may result in having to pay a higher tariff
- The Chair advised that Councillor Smith was unable to attend the meeting today to clarify her comments..

The Chair next invited questions from the Panel

- In response to a query about whether Cabinet Members had adequate information in front of them - ie the revised business plan, revised business case and assessment of risk - the Lead Cabinet Member said he had not had that report but had been given a briefing on the revised business case
- With regard to a comment about the Lead Cabinet Member not being persuaded that the four success factors mentioned in the s151 officer's report were in place despite the s151 officer's assurance, the Lead Cabinet Member said that different interpretations could be made from the same data.
- In response to a query about why the Lead Cabinet Member stated that a reputable accountant's view was over optimistic, he said that on page 61 the last bullet point had shown an incorrectly calculated rate of return and also that there had been instances at PCC where business cases had turned out to have been overly optimistic
- In response to a query, the Lead Cabinet Member said Cabinet was not convinced the business case was sufficiently robust. There was a significant risk about the number of customers that would be required and the Lead Cabinet Member considered the number was unrealistic and too risky for PCC to proceed with the venture

The Chair said Councillor Jones, the Lead Call-in Member would be asked for her response and then to sum up. Then the Lead Cabinet Member would be asked for his response and to then sum up. An opportunity would then be given to the Panel to put questions to officers followed by debate and a decision.

The meeting adjourned at 6.30pm

The meeting resumed at 6.40pm

The Chair invited the Lead Call-in Member to respond and sum up, which she then did including the following points:-.

- With regard to the comments about "secrecy" , the legal advice was that the meeting had to be in confidential session because details of the company's business case had been included.
- Briefings about VESL had been available from July 2017 and the confidential business case had also been available to members.
- The Executive can exercise its right to hear matters in confidential session.

- When opposition groups attended the briefings offered by the new Administration, comments were made but were ignored.
- The reason why there were no independent /non-executive directors on the Board was because the company had not yet started trading.
- If PCC had chosen to go ahead with a white label company, there would have been no risk to PCC but there would have been significantly less profit.
- With regard to interest shown by other councils, there had been approaches from other councils including the largest council in the country. Also after the Cabinet meeting on 10 August, the Lead Call-in Member had received several emails about VESL which she had forwarded to Chris Ward, section 151 officer.
- With regard to secrecy, there had been interim meetings of the governance board but as the company was not yet trading, these were not public meetings and the minutes had not been made available as it is a commercial entity.
- Industry experts all state VESL is an investable business.
- The closest comparator to VESL is Robin Hood and although that had made a £ 7.5m loss, by the third anniversary it made a £200k profit and the company was valued at £30m - based on potential going forward. PCC could be in a similar position if the decision on VESL were reversed.

To sum up, the Lead Call-in Member included the following points:-

- Energy is long term business. Councillors are uniquely positioned to take an integrated approach. PWC, Baringa and CMS all concluded that the business is sound.
- She considered that Cabinet had failed to understand the difference between a working loan and an investment. Their decision had deprived Portsmouth of benefits the company would have brought. Cabinet seemed to be prepared to write off the costs incurred so far - estimated to be £3.5m - all on the basis of perceived risks.
- She thanked the Labour Group for taking time to read the business case.
- She asked that this to be sent back to Cabinet for re-consideration.

The Chair invited the Lead Cabinet Member to sum up his case. Which he then did including the following points:-

- He was happy for the matter to come back to Cabinet if there was new information that Cabinet should see.
- It was a judgement call as to whether the business would make profits or losses
- Business plans do not always turn out to be accurate
- It was not necessarily the case that £3.5m will be lost.

It was proposed by Councillor Ryan Brent seconded by Councillor John Ferrett that standing orders be suspended and the Panel should move straight to a vote on the Call-in. Upon being put to the vote, this was LOST.

The Chair invited Councillor Vernon-Jackson to continue summing up which he did restating that he is very happy to take the item back to Cabinet to look at any new information to be presented and re-consider the decision.

Panel Members confirmed they did not wish to clarify with officers any factual points raised by either the Lead Call-in Member or the Lead Cabinet-Member.

Panel Members did not require any further debate on the matter before them.

It was proposed by Councillor Ian Lyon, seconded by Councillor Ryan Brent that the decision taken by Cabinet on 10 August be referred back to Cabinet for re-consideration on the grounds that the Scrutiny Management Panel believe the decision was taken without adequate information.

Upon being put to the vote this was unanimously CARRIED.

RESOLVED that the Scrutiny Management Panel referred back to Cabinet its decision taken on 10 August 2018 for re-consideration on the grounds that the Panel believe the decision was taken without adequate information.

The meeting concluded at 7.15 pm.

Councillor Tom Wood
Chair