

Subject:	Update on Achieving for Children transfer
Reason for briefing note:	To update Children's Services Overview and Scrutiny Panel on governance arrangements in place to manage the contract for the delivery of children's services through Achieving for Children.
Responsible officer(s):	Hilary Hall, Deputy Director Strategy and Commissioning
Senior leader sponsor:	Alison Alexander, Managing Director
Date:	10 September 2017

SUMMARY

On 1 August 2017, the Royal Borough formally entered into a partnership with the Royal Borough of Kingston upon Thames and the London Borough of Richmond upon Thames for the delivery of its children's services through Achieving for Children, the community interest company jointly owned by the three councils. 248.63FTE successfully transferred to Achieving for Children on that date. A robust governance structure, at Member, Managing Director and officer level, is in place to manage the ownership and performance of the company.

1 BACKGROUND

- 1.1 In September 2016, the Royal Borough agreed to enter into a partnership with the Royal Borough of Kingston upon Thames and the London Borough of Richmond upon Thames to deliver its children's services through Achieving for Children, the community interest company jointly owned by the three councils. This partnership formally came into effect on 1 August 2017 when 248.63FTE successfully transferred to Achieving for Children.
- 1.2 In line with statutory requirements, the Director of Children's Services remains employed by the Royal Borough but is seconded to Achieving for Children to lead the delivery of children's services in the borough.

2 KEY IMPLICATIONS

- 2.1 Operational delivery of children's services is now through Achieving for Children with staff continuing to be based in the Town Hall, Maidenhead. Effective management of the contract is vital and a robust governance structure, at Member, Managing Director and officer level, is in place. Overview and Scrutiny has a key role to play in this structure, in scrutinising performance of the contract and providing feedback.
- 2.2 Contract management will be particularly important for the remainder of 2017-2018 to manage and mitigate the reported overspend in children's services, primarily on placements and agency staff.
- 2.3 As a community interest company, Achieving for Children is governed by the Companies (Audit, Investigations and Community Enterprise) Act 2004 and the Community Interest Company Regulations 2005, together with guidance provided by the Community Interest Company Regulator.

- 2.4 It means that the assets of the company, including any profits or surplus generated, are locked into the company and there are restrictions on what they can be used for. They must either be retained within the company to be used for the community purposes for which it was formed or they can, in limited circumstances and only in agreement with the owners, be transferred out of the company.

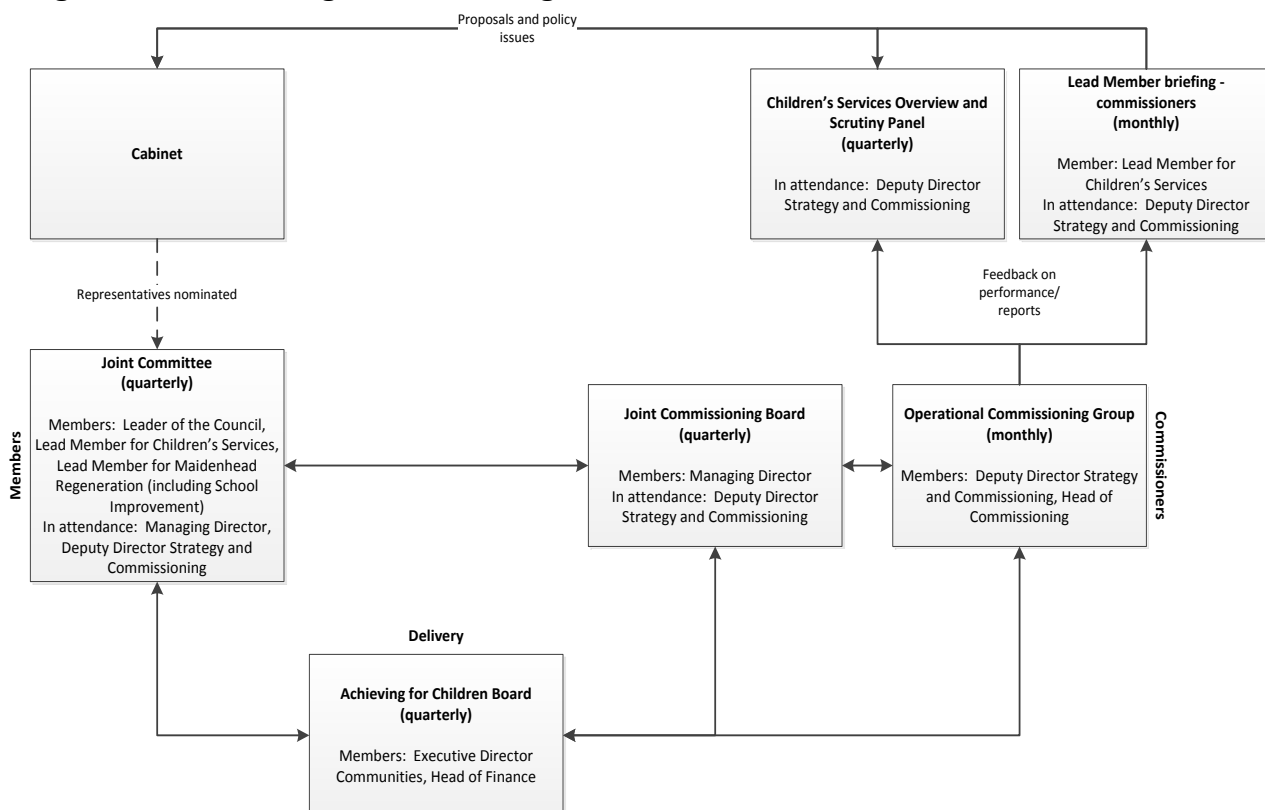
Teckal exemption

- 2.5 Achieving for Children is a Teckal controlled company. The Teckal exemption allows the three councils to commission Achieving for Children without a competitive procurement process, subject to the councils exercising control over the company which is “similar to that which it exercises over its own departments”. This is met by:
- The employment of the Director of Children’s Services, see point 1.2.
 - Reserved matters, see point 3.3 and appendix 2.
 - Council appointed Directors on the Achieving for Children Board, see point 3.7.

3 DETAILS

- 3.1 The governance structure associated with the management of the contract with Achieving for Children operates at Member, Managing Director and officer level, see diagram 1 and appendix 1.
- 3.2 It is important to note that these governance arrangements are concerned with the ownership of the company and the delivery of the contract. Proposals and policy issues in relation to children’s services in the borough will continue to come from the Lead Member, through Overview and Scrutiny Panel, to Cabinet for determination as they do now – with the delivery of the any resulting decision being effected by staff in Achieving for Children.

Diagram 1: Achieving for Children governance structure



Joint Committee

- 3.3 The Joint Committee has been established under the Local Government Acts 1972 and 2000, and comprises three members from each of the three authorities. It makes decisions on behalf of the three councils insofar as they relate to the ownership of Achieving for Children and specifically on the 19 reserved matters, see appendix 2. Cabinet has nominated the Leader of the Council, the Lead Member for Children's Services and the Lead Member for Maidenhead Regeneration and Maidenhead (including School Improvement) as the Royal Borough's representatives. The first meeting of the Joint Committee takes place on 21 September.
- 3.4 Before the Royal Borough joined the partnership, the Joint Committee had no decision making powers and any decisions had to be taken back into the executive decision making arrangements of the two constituent councils. As part of the process of admitting the Royal Borough, a review of the Joint Committee took place which recognised that decision making powers would be beneficial in the new arrangements.

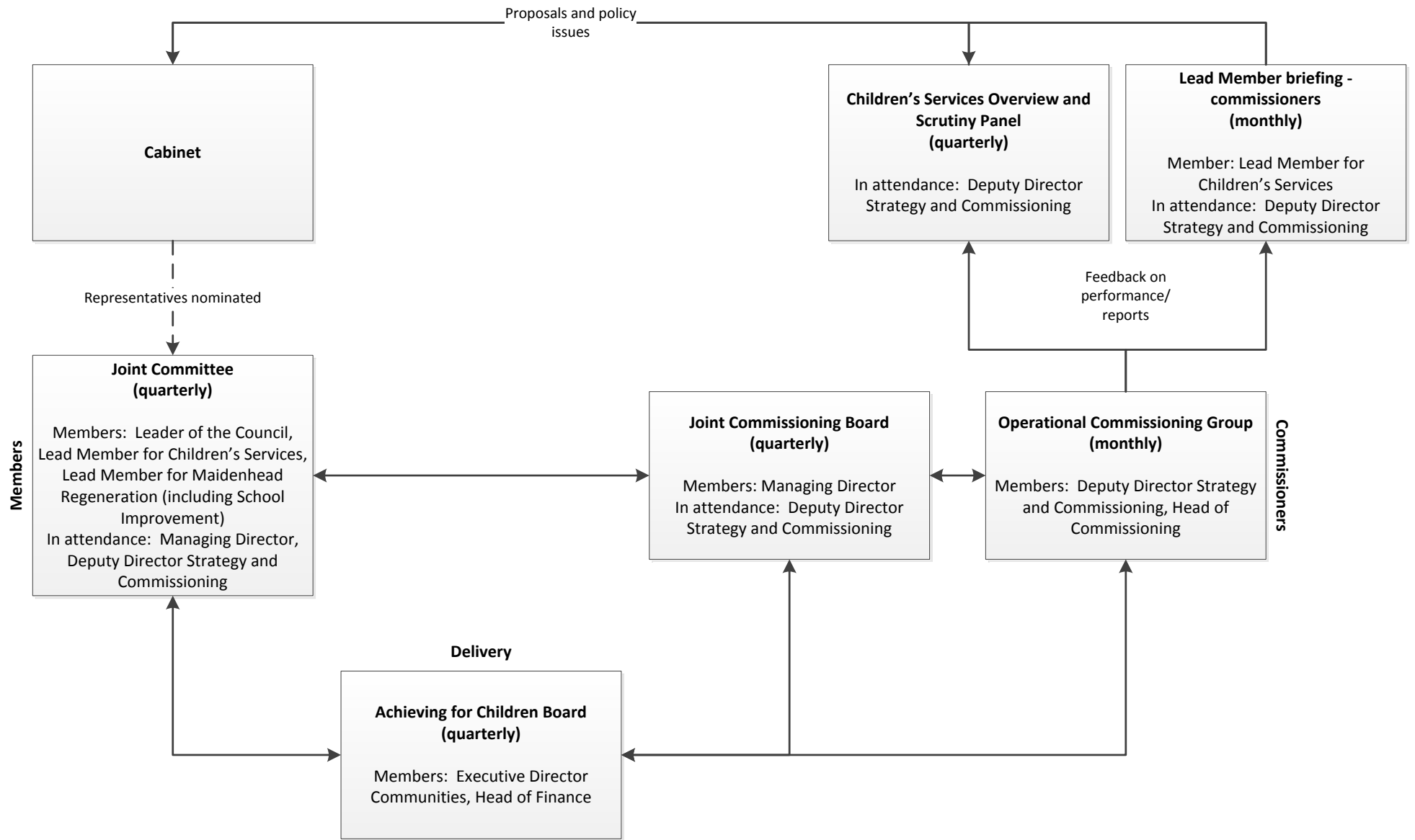
Commissioning arrangements

- 3.5 The Joint Commissioning Board comprises the Chief Executives/Managing Directors of the three councils and meets quarterly, supported by the three lead commissioners. It is concerned with how the company overall is performing and identifying areas for development or investment for recommendation to the Joint Committee.
- 3.6 The Operational Commissioning Group meets monthly and is concerned solely with the delivery of the contract in Windsor and Maidenhead. It is the place where the Director of Children's Services is held to account for the performance of the service and the delivery of the key performance indicators in the contract. The Deputy Director Strategy and Commissioning will feed back on performance from these meetings to both the Lead Member for Children's Services and Children's Services Overview and Scrutiny Panel.

Achieving for Children Board

- 3.7 The Achieving for Children board of directors is a body of elected or appointed individuals who jointly oversee the activities of the company. The Board comprises two executive directors (Chief Executive and Deputy Chief Executive), six non-executive independent directors and six council appointed directors – two per council. For the Royal Borough, the council appointed directors are the Executive Director Communities and the Head of Finance. The Articles of Association allow for any director, deputy director or head of service in the Royal Borough to act as a full substitute for either of the council appointees if they are unavailable.
- 3.8 The appointment or removal of any Company Director is a Reserved Matter, see appendix 2.

APPENDIX 1: ACHIEVING FOR CHILDREN GOVERNANCE STRUCTURE



APPENDIX 2: RESERVED MATTERS

Reserved matters are decisions of the company that are reserved to the three councils, as members of Achieving for Children, to agree. These reserved decisions are a key aspect of the company being Teckal controlled.

It must be clear that the councils as owners of the company are able to jointly exercise decisive influence over the strategic objectives and significant decisions of the company.

The reserved matters are split in to three classifications:

- 1 **Band One:** Reserved matters which will always require the consent of both Kingston and Richmond, in consultation with the Royal Borough. Decisions on this to be made by Full Council in both authorities.
- 2 **Band Two:** Reserved matters which need 75% of votes to be cast in favour to pass. These are matters that are required in law to be a special resolution. The decisions are to be made by Kingston full Council / Richmond Cabinet / the Royal Borough Cabinet with delegation to the Chief Executives/Managing Directors in consultation with the Leaders of the Councils.
- 3 **Band Three:** Reserved matters which can be decided by simple majority of the Joint Committee. These reserved matters are delegated to the Joint Committee, to which each Council elects three Councillors.

Reserved Matters

Band One

1. Permit the registration of any New Member of the Company

Band Two

1. Vary, in any respect, the Articles
2. Pass any resolution for the winding up of the Company or present any petition for the administration of the Company, other than where the Company is insolvent.
3. Appoint or remove the Chief Executive of the Company in consultation with the AfC Board
4. Change the name of the Company
5. Form any subsidiary of the Company or acquire shares in any other company or participate in any partnership or joint venture with a view to providing services to third parties without being subject to the Trading Opportunity Evaluation Process as prescribed by the Members.
6. Sell or dispose in any way whatsoever, any part of the business of the Company.
7. Amalgamate or merge with any other company or business undertaking.

Band Three

1. Enter into any arrangement, contract or transaction resulting in expenditure either with a capital value greater than £10,000 or revenue value greater than £10 million. Any expenditure of such revenue by the Company being less than £10 million shall be subject to the Company's own financial regulations and shall be subject to prior approval within the Business Plan and operating revenue budget, which shall be approved by the Members in accordance with the Reserved Matters.
2. Enter into any arrangement, contract or transaction where the Company is providing services to third parties without following the Trading Opportunity Evaluation Process as produced by the Members. Such arrangements, contracts or transactions shall also be subject to prior approval within the Business Plan, which shall be approved by the Members in accordance with the Reserved Matters.

3. Enter into any borrowing, credit facility or investment arrangement (other than trade credit in the ordinary course of business) that has not been approved by the Members under the Financial Plan.
4. Appoint or remove any auditor of the Company.
5. Adopt or amend the Business Plan in respect of each financial year, which for the avoidance of doubt shall include the adoption and amendment of an operating revenue budget for the financial year to which it relates.
6. Adopt or amend the Financial Plan.
7. Enter into any arrangement, contract or transaction within, ancillary or incidental to the ordinary course of the Company's business or is otherwise than on arm's length terms.
8. Deal with any surpluses of the Company.
9. Appoint or remove any Company Directors [from the Achieving for Children Board].
10. Agree any terms for any Directors (but for the avoidance of doubt this does not include the terms and conditions of employment of Executive Directors as defined in the Articles of Association of the Company).
11. Agreeing changes in employment terms and conditions which would be inconsistent