

## **ACHIEVING FOR CHILDREN - JOINT COMMITTEE**

**DATE:** **24 JUNE 2019**

**REPORT BY:** **MANAGING DIRECTOR, ACHIEVING FOR CHILDREN**

**SUBJECT:** **PROGRESS IN IMPLEMENTING THE GOVERNANCE REVIEW**

### **1. PURPOSE OF THE REPORT**

At its meeting on 14 November 2018, the Joint Committee agreed to amend the governance arrangements for Achieving for Children to support the delivery of a revised business strategy and to strengthen the company's overall accountability to the owning Councils. The report to the Joint Committee which sets out the scope, principles, objectives and outcomes of the governance review are attached at **ANNEX A**. This report updates the company's owners on the implementation of the seven recommendations in the governance review which were fully accepted by the Joint Committee.

### **2. RECOMMENDATIONS**

**The Joint Committee notes the progress that has been made in implementing the recommendations made in the Achieving for Children governance review.**

### **3. PROGRESS REPORT**

<b>Recommendation</b>	<b>Progress update</b>
<b>Recommendation 2.1</b>  Create an Ownership Board to set the strategic direction and priorities of the company and to inform the strategic commissioning of services across the three local authorities; the Board would meet four times per year immediately prior to any Joint Committee meeting	<b>COMPLETED</b>  The Ownership Board has been established and will meet four times per year in March, June, September and December. The Ownership Board meetings in June and December will be immediately followed by formal Joint Committee meetings, with the option to hold up to two additional Joint Committee meetings if required. The dates for the 2019 Ownership Board and Joint Committee meetings have been agreed.

<b>Recommendation 2.2</b>	<b>IN PROGRESS</b>  Joint legal advice has been instructed by Kingston and Richmond Councils. There are ongoing discussions between the three owning Councils.
<b>Recommendation 2.3</b>	<b>IN PROGRESS</b>  Six-monthly meetings are being scheduled between the Chair of the Board and the Leaders of the Councils. In addition, the Managing Director of Achieving for Children has quarterly meetings scheduled with the Chief Executives (or Managing Director) in each owning Council.
<b>Recommendation 2.4</b>	<b>IN PROGRESS</b>  The secondment agreement will be redrafted as part of the recruitment process for the Director of Children's Services in Kingston and Richmond. A more detailed secondment agreement is already in place for the Director of Children's Services in the Royal Borough of Windsor and Maidenhead; this will be reviewed as part of the redrafting.
<b>Recommendation 2.5</b>	<b>COMPLETED</b>  The Strategic Commissioning Board has been disbanded. The responsibilities of the Strategic Commissioning Board have been transferred to the Ownership Board.

<b>Recommendation 2.6</b>	<b>IN PROGRESS</b>
Commission a legal review of the commissioning agreement (contract) to ensure that it is fit for purpose for the remainder of the contract term and for any contract extensions should they be approved.	A legal review of the contract for Kingston and Richmond will be considered as part of the process for agreeing any extension to the initial commissioning agreement which comes to an end on 31 March 2021. The process for this will be agreed as part of a separate agenda item at Joint Committee. The initial term of the commissioning agreement between Achieving for Children and the Royal Borough of Windsor and Maidenhead ends on 31 July 2024.
<b>Recommendation 2.7</b>	<b>COMPLETED</b>
Formalise arrangements for the scrutiny of Achieving for Children as a company in the scrutiny programmes of the three owning Council in order to improve oversight, hold the company to account, and provide assurance of the benefits of the company model	A joint report from the Managing Director and Chair of the Board of Directors will be presented to the Councils for scrutiny twice per year. It is expected that these will be scheduled in or around June and December each year. The June meeting will include an opportunity for scrutiny of the company's annual report and statement of accounts, and the December meeting will support the annual review and revision of the company's business plan. In Kingston, the reports will be presented to the Children's and Adults' Care and Education Committee; in Richmond, the reports will be presented to the new Children's Services Committee. In Windsor and Maidenhead, the reports will be presented to the Adults, Children and Health Overview and Scrutiny Panel.

#### 4. CONTACT

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## **ANNEX A**

### **ACHIEVING FOR CHILDREN JOINT COMMITTEE**

**DATE:** **14 NOVEMBER 2018**

**REPORT BY:** **INTERIM CHIEF EXECUTIVE, ACHIEVING FOR CHILDREN**

**SUBJECT:** **REVIEW OF GOVERNANCE ARRANGEMENTS**

#### **1. PURPOSE OF THE REPORT**

At its meeting on 11 July 2018, the Joint Committee agreed the future strategic direction and business strategy for Achieving for Children for the remainder of its initial contract term with the owning Councils. This included a revised approach to future growth, external consultancy and the further development of its commercial services. To support the delivery of a revised business strategy, the Joint Committee requested a review of the governance arrangements for the company. A task and finish group was set up to complete the review, comprising the Directors of Children's Services, the Lead Commissioners, the interim Chief Executive and three non-executive directors from the company's Board of Directors. This report provides the Joint Committee with proposals to revise the governance arrangements in order to strengthen the company's overall accountability to the owning Councils.

#### **2. RECOMMENDATIONS**

- 2.1 Create an ownership board to set the strategic direction and priorities of the company and to inform the strategic commissioning of services across the three local authorities; the board would meet four times per year immediately prior to any Joint Committee meeting (paragraph 6.1).**
- 2.2 Establish a programme of relationship meetings between the Chair of the Board of Directors and the key stakeholders in the Councils to develop effective joint working and decision-making on the development of the company (paragraph 6.2).**
- 2.3 Revise the secondment agreement for the Director of Children's Services to clearly set out the corporate responsibilities of the role, matrix accountabilities to the company and the Council, and the line of sight from the Leader of the Council and Lead Member to the Director of Children's Services in relation to safeguarding and other statutory responsibilities (paragraph 6.4).**
- 2.4 Remove the strategic commissioning board from the governance structure on the basis that its responsibilities are transferred to the ownership board if recommendation 2.1 is agreed (paragraph 6.5).**

**2.5 Formalise arrangements for the scrutiny of Achieving for Children as a company in the scrutiny programmes of the three owning Council in order to improve oversight, hold the company to account, and provide assurance of the benefits of the company model (paragraph 6.5).**

### **3. SCOPE OF THE GOVERNANCE REVIEW**

The purpose of the review is to test the efficiency and effectiveness of the governance arrangements for Achieving for Children in order to: strengthen accountability to the owning Councils; bring greater clarity to decision-making structures and processes; and make commissioning arrangements fit for purpose for the remainder of the initial term of the company's contract. A task and finish group was set up to complete the review. The group comprises the Directors of Children's Services, the Lead Commissioners, the interim Chief Executive and three non-executive directors from the company's Board of Directors. The scope of the review is to consider how the current governance arrangements could be strengthened in terms of the control, accountability, direction-setting and leadership of the company in five main areas:

- Ownership functions for the company vested in the Joint Committee
- Membership, role and responsibilities of the Board of Directors
- Role and responsibilities of the company Chief Executive
- Role and responsibilities of the Director of Children's Services
- Operational commissioning and contract management arrangements

The scope of the review has been informed by Kingston Council's decision to appoint their own interim Director of Children's Services when the current post-holder leaves his post in late November 2018. The post is currently a shared appointment with Richmond Council, who will now also make their own interim appointment. The two Councils will use the interim period, which is likely to be 9 to 12 months, to consider whether they wish to continue with separate appointments or revert to a joint arrangement. The interim arrangements for Kingston and Richmond are unlikely to have an impact on the delivery of services in Windsor and Maidenhead, who already have their own Director of Children's Services and operational management structure.

### **4. GOVERNANCE PRINCIPLES**

For the purpose of the review, governance has been defined as the ways that Achieving for Children is directed, controlled and led so that all decisions that are made are effective in delivering high quality and financially sustainable services that achieve positive outcomes for children and their families. The task and finish group agreed a set of principles to guide its review of governance arrangements. They seek to ensure that future arrangements secure clarity, accountability, transparency, competence, responsiveness, equity, efficiency and participation.

## **5. OBJECTIVES OF THE GOVERNANCE REVIEW**

The objectives to be achieved from the governance review were identified at a facilitated workshop with the task and finish group members on 2 October 2018. The meeting identified a number of positive elements within the governance structure which needed to be retained; however, it also identified key areas where the governance structure needed to be amended or adjusted to optimise its effectiveness and reflect the agreed governance principles. The following benefits are required to be achieved from the review for some or all of the owning Councils:

- a. Greater opportunities for elected Members to be involved in setting the strategic direction of Achieving for Children and the services it is commissioned to deliver, ensuring better alignment with the strategic priorities for each member Council.
- b. Greater line of sight into the company by the Councils with control mechanisms that are similar to those that the Councils have over their own departments; this to be achieved without restricting the commercial and other benefits that the company delivery model provides.
- c. A clearer line of accountability and an improved relationship between the member Councils (as shareholders) and the Board of Directors; this includes greater understanding of the Board's role and clarity about the role of the Council-appointed Directors represented on the Board.
- d. A clearer line of accountability between the Lead Member for Children's Services and the Director of Children's Services, in particular in relation to each Council's strategic aims, policy direction and fundamental responsibility for safeguarding and promoting the welfare of children and young people. This is particularly relevant to Kingston and Richmond Councils where there is a shared Director of Children's Services.
- e. Greater involvement of the Director of Children's Services in the corporate leadership of the Councils so that the needs of children, young people and families are understood, there is an effective exchange of information, and the implications of policy decisions are appropriately considered. This is particularly relevant to Kingston and Richmond Councils where there is a shared Director of Children's Services.
- f. Improved collaborative working and decision-making between the member Councils so that each Council benefits from the cost-efficiencies, resilience and operational effectiveness of the company's delivery model, and the strategic commissioning of services is well coordinated.
- g. Greater clarity about the role of the Chief Executive of Achieving for Children and its relationship to the Director of Children's Services, so that accountabilities and responsibilities are clear and well understood by all stakeholders.

- h. Better use of existing Council scrutiny and independent assurance mechanisms to hold Achieving for Children to account and to enable a wider group of stakeholders to understand the company's financial position, service performance and future plans.

## **6. REVIEW OUTCOMES AND SUMMARY OF PROPOSALS**

### **6.1 Ownership**

The ownership of the company is through a share of the guarantee. Kingston Council and Richmond Council each hold a 40% share of the guarantee; the Royal Borough of Windsor and Maidenhead has a 20% share. The original aim was to admit up to five owning members to the company with all five having a 20% share of the guarantee. Windsor and Maidenhead were offered the maximum share of the guarantee with the aim that the founding members' share of the guarantee would reduce as new members were admitted.

An Inter-Authority Agreement sets out how the three owning local authorities will act together in their joint ownership of the company. The agreement also sets out those decisions that are reserved to the owning Councils. The 19 reserved decisions are banded: band 1 decisions are reserved to the two founding Councils (solely the admission of a local authority as a member of the company); band 2 decisions require are special resolution decisions as directed by Company law, that require 75% of votes to be in favour to be agreed (for example: forming a subsidiary of the company); band 3 matters are decided by a simple majority vote (for example: approval of the company's business plan). The reserved matters are attached to the report as **ANNEX B**. The owning Councils exercise their ownership rights and reserved decision-making through a Joint Committee which has equal representation from each local authority. The Joint Committee meets three to four times each year in a public meeting.

In light of the decision made at the Joint Committee on 11 July 2018 that the company should not expand its membership within the next two to three years, the Royal Borough of Windsor and Maidenhead formally requested that consideration be given to them having an equal (one-third) share of the guarantee in the company. In particular, the Leader of the Council's request relates to band 2 reserved decisions which legally require a 75% vote of the share of the guarantee to pass; band 2 decisions include those matters where a special resolution of the company is required in company law. Together, Kingston and Richmond Councils own 80% of the share of the guarantee. When the two Councils vote in the same way, Windsor and Maidenhead cannot veto this decision; however, where Kingston and/or Richmond Councils do not vote in favour of a band 2 reserved decision and Windsor and Maidenhead vote in favour a decision will not be passed.

The Leader of Windsor and Maidenhead Council has requested an increased (one-third) share of the guarantee to be an equal decision-maker in band 2 matters. With a 20% of the guarantee, Windsor and Maidenhead voting with either Kingston or Richmond Council would not have the 75% of the share of the guarantee to pass the resolution. The Leader of the Council in Windsor and Maidenhead has not made any requests in relation to band 1 decisions which are reserved to the two founding Councils, or band 3 decisions which are

made by a simple majority vote. It was agreed that the Leader of the Council's request would be considered as part of the governance review.

## **Proposals**

The 19 reserved matters and their banding are appropriate and cover those ownership areas that must be reserved to the Councils as shareholders. The reserved matters were revised in July 2017 in preparation for the admission of RBWM into the company. There is a need for a formal meeting for shared decision-making about company ownership matters. It is therefore proposed to retain the Joint Committee in its current form, with equal representation of three elected Members from each Council. The Joint Committee will meet at least twice per year. The timing and forward plan for meetings would be informed by the reserved decision requirements: for example, it is expected that the Committee would always meet in June to approve the company's annual report and accounts and endorse the annual business plan.

Recent Joint Committee meetings have benefited from a joint Member and senior officer workshop prior to the formal meeting. The addition of an ownership board meeting prior to the Joint Committee will promote discussion about the strategic direction and priorities for the company and help identify opportunities for services to be jointly commissioned or delivered across all three Councils. The ownership board would meet four times per year and immediately prior to the Joint Committee where a meeting is scheduled. This will include the opportunity, where necessary, for the ownership board to meet without any representatives of Achieving for Children being present. For the avoidance of doubt, this includes employees and the Board of Directors. In addition, it is proposed to hold an annual ownership meeting in January or February each year. This would be an opportunity for all elected Members in the three owning Councils to receive a presentation from the Board of Directors and to ask questions about the strategic direction, performance and financial sustainability of the company. Issues raised at the ownership meeting will inform local commissioning decisions, prioritisation, and the company's annual business plan.

It is proposed that all owning Council's seek legal advice on the request from the Royal Borough of Windsor and Maidenhead to increase its share to one-third of the guarantee and proportion of votes in relation to band 2 reserved decisions in a way that is lawful and beneficial to all owners.

## **6.2 Board of Directors**

Non-reserved decisions are delegated to the company's Board of Directors. The operation of the Board, its membership and decision-making powers are set out in the company's Articles of Association. The Board may have a maximum of 16 Directors: up to 2 Executive Directors who are employed by the company; up to 6 Non-Executive Directors appointed and employed by the owning Councils; and up to 6 Non-Executive Independent Directors appointed by the Councils. The proportionality of the different categories of director is needed to ensure that the company provides the owning Councils with control over the company to meet the requirements of the Teckal exemption. The Board is responsible for ensuring the effective governance and operation of the company, including its compliance with company law and CIC requirements, financial sustainability and business planning.

## **Proposals**

It is not proposed to make any material changes to the Articles of Association of the company and the structure of the Board of Directors; however, the Councils are asked to consider their appointments to the Board to minimise the likelihood of unresolvable conflicts of interest between statutory officer accountabilities and legal responsibilities as company directors. It is also proposed that the Councils begin a process to reduce the number of Council-appointed and independent non-executive directors appointed to the Board whilst maintaining the proportionality required by Teckal. It is proposed that this is achieved through natural attrition as the four-year terms of non-executive directors come to an end. The principle that each Council determines who is best placed to serve as their appointed director should be retained. Finally, it is proposed that the Board Chair leads a meeting with each Council at least twice per year. This will provide the opportunity for direct discussion between the non-executive directors, elected Members and senior Council officers.

### **6.3 Company Chief Executive**

The Chief Executive of Achieving for Children retired in June 2018. The Chief Operating Officer has been the interim Chief Executive since this time. At its meeting on 11 July 2018, the Joint Committee tasked the Chair of the Board of Directors with developing proposals and a job profile for the role. A proposal by the Chair of the Board of Directors is item 5 (b) on the Joint Committee agenda.

#### **Proposal**

It is proposed that the posts of Chief Executive and Chief Operating Officer are deleted and a new combined post is created. The post could be titled either Chief Executive or Managing Director of Achieving for Children, depending on the Joint Committee's preference. The job profile for the post would need to be revised to ensure the accountabilities of the role are clear, including its relationship to the Directors of Children's Services and the matrix management arrangements with the Councils' Chief Executives for these posts. The Chief Executive or Managing Director would be responsible for the leadership of the company and its core business infrastructure, as well as those services that are delivered company-wide. The detail of the appointment process is set out in a separate report to the Joint Committee. It is a band 2 reserved decision to be made by the Council Chief Executives in consultation with the Leaders of the Councils.

### **6.4 Director of Children's Services**

Employment of the Directors of Children's Services (DCS) is retained by the Councils. The DCS is a statutory role that cannot be delegated to a third-party provider even where this is wholly Council-owned. The post-holders are seconded into the company to lead the services for which they are statutorily responsible and are held accountable for their effective delivery by the Councils' Chief Executives. As noted earlier in this report, Kingston Council has made the decision to appoint their own interim DCS from November 2018 for a period of 9 to 12

months; Richmond Council will also appoint an interim DCS. There is a separate DCS for the Royal Borough of Windsor and Maidenhead.

### **Proposal**

Careful consideration has been given to the structural options for the DCS, primarily whether the post should operate within the Councils as their principal adviser on children's services and the strategic commissioner for Achieving for Children. It is not proposed to adopt this model on the basis that the DCS should not be separated from the statutory services for which he or she is directly accountable. In addition, it is unlikely that the Councils would be able to recruit high-calibre candidates for a commissioning role with no service leadership responsibilities.

The job profile and secondment agreement for the DCS will be revised to make clear the accountabilities of the post to the Leader of the Council, Lead Member and Council Chief Executive, and specify how these will be achieved through attendance at formal meetings and other events. The secondment agreement will also clearly set out the escalation process where there is a dispute or disagreement between the company Chief Executive and the Director of Children's Services; this will be an escalation to the Council Chief Executives for resolution, where necessary in liaison with the Lead Member and/or the Leader of the Council. The appointment of separate DCS posts in Kingston and Richmond will be helpful in creating additional capacity for service delivery, innovation and policy development with the Lead Member, and as an integral part in the corporate leadership of the Councils.

### **6.5 Commissioning**

The Councils have delegated their responsibilities for the delivery of their statutory children's services to Achieving for Children under the freedoms provided by the Education Act 1996 and the Children and Young Persons Act 2008. This includes all early help, education and social care services. The company is also registered as a voluntary adoption agency and independent fostering agency to meet the specific regulatory requirements of these services. The detailed services to be delivered for each Council are set out in a commissioning agreement (contract) based on the outcomes required from each Council's strategic plan for children and young people. This is a 12 year contract (7 years + 5 years) with a final end point in March 2026. The agreements specify the type and level of service to be provided, as well as the Councils' expectations in relation to service performance and quality. Each Council has a Lead Commissioner responsible for leading the specification and contract management of children's services, with planning and monitoring carried out through strategic and operational commissioning groups. The strategic commissioning board is responsible for joint planning, direction-setting and commissioning across the three local authority members. The operational commissioning groups are responsible for the contract management of the company in relation to its financial position, performance and service quality. There is a joint operational commissioning group for Kingston and Richmond, and a separate group for Windsor and Maidenhead. Scrutiny of Achieving for Children's services is carried out through the Councils' overview and scrutiny processes, and by external bodies such as the Safeguarding Children Boards. Each Council would remain responsible for agreeing policy and strategic priorities through their existing democratic arrangements and schemes of delegation.

## **Proposal**

It is proposed to remove the strategic commissioning board from the governance structure and its responsibilities for direction-setting and joint commissioning are transferred to the shareholders' board. No changes are proposed to the operational commissioning and contract management arrangements as these currently work well; however, the Lead Commissioners in Kingston and Richmond will review the benefit of having separate contract management meetings when the interim DCS arrangements are established. In addition, Kingston Council has requested a legal review of the current contract arrangements; this will be completed as a second phase of the governance review.

It is proposed that scrutiny arrangements for Achieving for Children are formalised in the forward plans for each local authority. It is expected that, in addition to the usual scrutiny of the effectiveness of local children's services, the Councils' will scrutinise the company at two scrutiny meetings each year. This will enable elected Members to have oversight of the company, hold it to account and provide greater transparency in relation to the company's trading and commercial activity to be assured of the benefits it brings to children's services locally. It would seem sensible that one of these meetings ties in with the publication and approval of the company's annual report and accounts in June each year, and the other was a mid-year review of the business plan in October or November each year. These scrutiny meetings would be attended by the company's Chief Executive or Managing Director and the Chair or representatives of the Board of Directors, and would be in addition to the attendance of the DCS and other senior officers at scrutiny meetings to discuss service issues.

## **7. CONTACT**

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