

ACHIEVING FOR CHILDREN JOINT COMMITTEE

DATE: 2 MARCH 2020

**REPORT OF: CHIEF EXECUTIVES OF THE ROYAL BOROUGH OF KINGSTON,
LONDON BOROUGH OF RICHMOND AND MANAGING DIRECTOR
OF THE ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD**

SUBJECT: GOVERNANCE REVIEW 2019-20: PROPOSED NEXT STEPS

1. PURPOSE OF THE REPORT

- 1.1. Local authorities are accountable to their communities for how public monies are spent, ensuring that this reflects local priorities and represents value for money. The partnership arrangement between Kingston, Richmond, Windsor and Maidenhead as co-owners of Achieving for Children (AfC) enables the Councils to work together to deliver children's services; sharing staff, services, resources and best practice.
- 1.2. Windsor and Maidenhead has a separate contract with AfC. Kingston and Richmond have a joint contract and have recently taken the decision to extend their shared contract with AfC and as such to continue with the partnership approach. Therefore, it is timely and appropriate to reassess, re-evaluate and refresh the governance that supports AfC to ensure it remains fit for purpose and enables responsive and effective decision making.
- 1.3. The Joint Committee has considered matters of Company Governance and effectiveness in previous governance reviews. At the Ownership Board meeting of 09 December 2019 Members requested that the governance role currently undertaken by the Joint Committee be reconsidered with recommendations presented at the March 2020 meeting.
- 1.4. This report sets out the proposed changes to the AfC governance framework and recommends several options for this Committee's consideration. It is important to note that this review is taking place alongside an independent AfC Board effectiveness review, which seeks to ensure the AfC Board of Directors meets its legal obligations and functions in an efficient and effective manner.
- 1.5. The findings of the independent Board effectiveness review will focus on the function and operation of the board whilst this review looks at the structure of the Board and its purpose within the wider governance framework. The two reviews therefore, whilst separate, are closely related. Once agreement has been reached on the overarching governance framework, the recommendations of the Board effectiveness review will be considered and implemented as appropriate.

2. RECOMMENDATIONS

The Joint Committee is recommended to agree:

1. The disbandment of the Joint Committee and the transfer of its functions to the Children and Adult's Care and Education Committee (Kingston), Education and Children's Service Committee (Richmond) and Cabinet (Windsor and Maidenhead). This would require the Joint Committee to recommend constitutional changes to full Council in line with each Council's annual constitutional review (May 2020).
2. The establishment of a twice-yearly strategic Ownership Board attended by elected Members and AfC Board of Directors.
3. Changes to the membership of the AfC board to reduce the number of NEIDs to a maximum of three who will reflect the identified needs and skills of the Board
4. To delegate any changes to the AfC board, that may be identified in the AfC board effectiveness review, to the Chief Executives of Richmond and Kingston and Managing Director of Windsor and Maidenhead, in consultation with Leaders.

1. DETAILS

- 3.1. The AfC governance framework is complex with several different boards responsible for both Company Governance and strategic service direction. The current governance is set out in the table below:

Board	Purpose
Full Council	Band 1 reserved matters (Kingston and Richmond only). Company scheme of delegation/ Articles of Association. As laid out within the constitution.
Joint AfC Committee	Band 3 reserved matters (majority).
Ownership Board	Discharges functions on behalf of the Councils, so far, as they relate to the ownership of jointly owned company. Setting out the expectations and ambitions of the three Councils as owners of Achieving for Children.
Council Chief Executive	Band 2 Reserved Matters (special resolutions) in consultation with the Leader of the Council: <ul style="list-style-type: none"> - Enacts the Reserved Matters on behalf of the members at a Company meeting.

<p>AfC Board of Directors (CiC Board attended by Council appointed Directors but no elected Members)</p>	<p>Acts in the interests of the Company with a duty to:</p> <ul style="list-style-type: none"> - Act within their powers. - Promote the success of the company for the benefit of the shareholder(s) – in this case the council. - Exercise independent judgement (subject to authorized restrictions/allowances provided in the articles e.g. taking into account the appointing Council's interests. - Exercise reasonable skill, care and judgement. - Avoid unauthorised conflicts of interest (conflicts with the Councils can be authorised). - Declare an interest in a proposed transaction or arrangement with the company.
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Background to Joint Committee

- 3.2 The Joint Committee was established in 2013 to oversee the establishment of Achieving for Children. It meets in public and is formally delegated within the Councils' constitutions. It **solely focuses on aspects of Company Governance (not Children's Service delivery)**. It discharges functions on behalf of the Councils (as Company owners) including the band 3 reserved matters (such as approval of the AfC business plan and authorising trading activity). It is responsible for setting the expectations and ambitions of the three Council owners; however, it is not responsible for monitoring service delivery and performance (the latter is the role of Commissioners, the Directors of Children's Services and each Councils' Cabinet or Committee).
- 3.3 The Joint Committee is constitutionally formed of 3 elected Members from each Council, including the Leader, Lead Children's Services Member and another. It can also be attended by the Chief Executives, Council Commissioners, AfC Board Chair, AfC Managing Director, the Directors of Children's Services and other officers as appropriate who don't have delegated decision-making authority.
- 3.4. Originally meeting four times a year this has more recently reduced to twice yearly. A separate meeting of the elected Members and representatives from AfC also takes place to allow for the owning Councils' to share matters that may impact strategic commissioning or to discuss matters of company governance. This is known as the Ownership Board. The Ownership Board is not a decision-making body but a forum for discussion which may then lead to owners making decisions through the Joint Committee.
- 3.5. There is universal agreement that the Joint Committee and Ownership Board were beneficial in the early days of AfC but more recently have added an additional non value-adding layer to governance. The minutes of the meetings allow us to look at the meetings chronology and the decisions taken. As AfC has matured the councils have used their own Cabinet or Committee decision making structures to make service level delivery decisions and the Joint Committee has focussed solely on a limited number of decisions relating to Company Governance.
- 3.6. Joint Committee agendas have included reviewing the AfC business plan, noting

reserved matters made since the last meeting, reviewing company governance, reviewing the AfC business development plan, assessing the growth of AfC and admission of RBWM as a new Member. Whilst the meeting is a public meeting no member of the public has ever attended.

- 3.7 The owning Councils' Committee or Cabinet structures are able to perform the duties that currently sit within the Joint Committee remit. Therefore, it is perceived that the Joint Committee adds a layer of administrative burden and process, as well as requiring significant officer time to support it.

Background to the AfC Board

- 3.9. The AfC Board of Directors is a statutory requirement as defined in Companies Act (2013) with duties as defined in paragraph 3.1 above.
- 3.10. The AfC Board meets six times a year and its membership is comprised of
- Up to 6 Council Appointed Directors, who are officers of the three councils who act as Non Executive Directors on the Board. On the current AfC Board there are 4, two from RBWM, one from Kingston and one from Richmond. Limited use of substitutes has meant attendance is inconsistent.
 - Up to 6 Non-Executive Independent Directors (NEIDs), who are individuals who are independent of both AfC and the Councils and who can add value and expertise to the Board. Currently there are 4 NEIDs on the AfC Board.
 - NEDs and NEIDs typically do not engage in day-to-day operational management but are involved in policy direction and maintain a strategic overview of performance risks and issues. In addition, their responsibilities include the monitoring of the executive directors and acting in the interest of the company stakeholders. To meet the Teckal Control test, the AfC Board must have Council Appointed Directors and must not have more non-executive independent Directors than Council Directors. There is no legal requirement to have NEIDs and they are remunerated at a daily rate.
 - 2 AfC Executive Directors (though recent changes to the senior structure of AfC now mean that the Board would be attended and serviced by the Chief Operating Officer alone).
- 3.11 Agenda items are a mix of service delivery and company matters.
- 3.12. Members of the Joint Committee have considered the AfC Board and want to ensure that it is accountable to the Councils' and provides value for money.
- 3.14 The remit of the AfC Board is different to a wholly owned private company, and further work is required to clarify roles, boundaries and accountability.
- 3.13. The AfC Board commissioned an independent Board Effectiveness Review in November 2019. The Review is being undertaken by Rob Garner (Garwood Solutions). The Review has taken input from all AfC Board Members - Council appointed, NEID and AfC Executive - as well as the Commissioning Support and Governance Leads undertaking this AfC governance review. It is acknowledged that

the findings of the AfC Board Effectiveness Review will be considered, as appropriate, through the implementation of this governance review.

Principles supporting Governance Review

3.14. The principles behind this governance review are to:

- Ensure roles, responsibilities and decision making are clearly defined and thereby eliminating any overlap that currently exists within the governance structure
- Ensure governance is proportionate and cost effective in light of increased Company maturity and the capacity of AfC Executive
- Ensure compliance with Teckal (which is the mechanism through which the Councils procure services from AfC without a competitive procurement process), as provided by Regulation 12(1) Public Contracts Regulations 2015 (also known as the Teckal exemption). In order to rely on the exemption to procure AfC Councils must meet the following three tests:
 - Control test: The three Councils must exercise control over AfC in a way that is similar to that which it exercises over its departments.
 - Function test: AfC must carry out 80% of its activities on behalf of owning Councils.
 - Private ownership test: There must be no private capital invested in AfC.
- Proposed changes also uphold the principles of governance as recommended and agreed in the Joint Committee's governance review (2015):
 - Transparency and accountability for decision making secured through a clear governance framework, scheme of delegated authority and explicit Member role.
 - Clarity of responsibilities in order to hold AfC to account and ability of Councils to direct the actions of the Directors of Children's Service.
 - Recognising the owning Council's sovereign priorities reflecting their wider strategic aims.
 - Clarity of objectives and outcomes reflected in proportionate arrangements that support delivery.
 - Independent assurance and clear decision points.
 - The fundamental responsibility for safeguarding.

3.15 Recommendations of the Governance Review

Recommendation	Benefit (why)	How would this be achieved (actions)
Joint Committee		
<p>1. The Joint Committee is disbanded and that the functions are transferred to each Council's Committee/Cabinet.</p>	<p>Committee/Cabinet will be able to discharge functions on behalf of Councils including band 3 reserved matters and set out the expectations and ambitions of the three Council owners alongside consideration of service delivery and policy changes.</p> <p>Will ensure that there is a wider forum for decision making with additional members and cross-party representation.</p> <p>Reserved matter reports for decision will be scheduled for Committee/Cabinet via the forward plan for each Council in a timely manner. They would be subject to the same processes as all other Council reports.</p> <p>To date no members of the public have attended a Joint Committee. Cabinet/ Committee is an established forum where members of the public routinely ask questions and join the public gallery. Cabinet/Committee are however subject to exempt information such as commercially sensitive reports and on occasion items can be withdrawn from public view.</p>	<p>Recommendation to Joint Committee 2 March 2020.</p> <p>Committee/Cabinet report May-June following which each sovereign Council will be required to make constitutional changes.</p> <p>Quarterly reports on AfC Company Governance presented to sovereign Council's Committee/Cabinet cycle, using existing governance process.</p>
<p>2. Decisions are made in a similar way to other Council departments (Teckal control test).</p>	<p>Existing Council decision making mechanisms are utilised.</p> <p>Company decisions are made transparently, in public by Members who form the Committee/Cabinet for each sovereign Council.</p>	<p>Cabinet/Committee reports within the established governance cycle.</p> <p>Reserved matter reports for decision will be scheduled for Committee/Cabinet via the forward plan for each Council in a timely manner.</p>

	<p>Company decision making is considered in the same forum as Council priorities, policy change and service delivery.</p> <p>Members and senior officers attend meetings that are an effective use of time. No additional meetings are required.</p> <p>Assures Members that each Council is getting value for money. Decision making via the same mechanism as other Council Departments further demonstrates control for Teckal purposes and keeps it transparent.</p> <p>Members decision making as owners of AfC becomes more widely 'owned' by Members.</p>	<p>Some reserved matter decision making to either can be delegated to the Council Chief Executives in consultation with the Leader, Lead Member/Committee Chair or Committee/Cabinet.</p>
<p>3. Establish an informal meeting to allow Elected Members of the owning Councils the opportunity to AfC strategic direction and local priorities.</p>	<p>The Ownership Board would remain as prioritised diary time for Members and Officers where they can explore the strategic direction and sovereign Council's priorities. This would allow Members to collectively discuss service planning and performance to enable consistent decision making on reserved matters in their respective Committees/ Cabinet.</p> <p>Opportunity for owning Councils to collaboratively discuss sovereign priorities.</p> <p>Format of the meeting could be an informal workshop style to promote conversation.</p> <p>It can be attended by Members nominated by the Leaders (e.g. all Committee Members, Cabinet Members and opposition) rather than the three on Joint Committee.</p>	<p>A meeting (up to twice per year) will be scheduled to:</p> <ul style="list-style-type: none"> ● discuss the strategic direction of AfC (e.g. trading and growth and formation/refresh of the AfC business plan). ● provide an environment for members to hear about the delivery of AfC. ● enable networking across the sovereign authorities relating to the delivery of children's services. <p>To be funded and arranged by Councils' Corporate Services/Democratic Services.</p> <p>Stakeholder events to be held in -</p> <ul style="list-style-type: none"> ● November: to coincide with Councils' budget setting process and inform priorities for forthcoming business plan. ● July: to review financial and service performance as featured in the annual report.

<p>4. Ability to form a Dispute Resolution Committee</p>	<p>A dispute resolution panel could be established as a sub Committee of Committee/Cabinet to deal with the unlikely event that the sovereign councils are unable to reach agreement on a common way forward. The panel would be activated if required.</p>	<p>This panel will be formed but will only meet and be active if there is a requirement for it to do so.</p> <p>Amend the existing AfC Joint Committee Terms of Reference to form the Dispute Resolution Committee.</p>
<p>AfC Board of Directors</p>		
<p>5. The AfC Board will reduce the number of NEIDs to a maximum of three (determined by identified needs and skills of the Board)</p>	<p>Offers value for money (Seeks to reduce expenditure and reduce bureaucracy).</p> <p>The AfC Board are effectively skilled to complete their function</p> <p>The Board will be appropriately Council focussed yet commercially informed.</p> <p>Having up to 3 NEIDs would bring additional external scrutiny, and allow for company focused subject specialism, i.e. IFA/ trading model/ residential homes. For example, the NEID could take on a mentorship role/ focused key values and development of traded vision. Providing additional capacity and visioning.</p>	<p>Ensure Teckal compliance by promoting attendance by Council appointed Directors.</p> <p>Implementation of AfC Board effectiveness review findings (as appropriate).</p> <p>Reduce the number of NEIDs by non-renewal of contract on expiry of term unless the NEID has skills identified within board effectiveness review that are not covered by existing NEIDS. Alternatively conduct a competitive recruitment process for NEIDs using existing pool/new candidates to meet skills required.</p> <p>Ensuring adequate coaching and mentoring for all AfC Board Directors.</p> <p>Revisions to the constitution of the AfC Board to accommodate upto 3 NEIDs.</p>

<p>6. Consider and implement (as appropriate) findings of the board effectiveness review.</p>	<p>The AfC Board is enabled to focus on matters related to Company Governance in addition to its overall scrutiny of service delivery.</p> <p>Focusses on company matters such as workforce, trading and income generation (bids), restructuring, financially and commercially sustainable.</p> <p>Ensures that the Company is compliant with statutory duties (Company Act 2006 and Community Interest Company Regulations 2005).</p>	<p>Awaiting discussion on the board effectiveness review.</p> <p>Specific changes to the AfC Board will be considered by Councils' collaboratively with the AfC Board.</p> <p>Role and accountability of the AfC Board will be defined.</p> <p>Any changes requiring decision will be taken by Chief Executives/Managing Director, and the AfC Board by way of general meeting, and reported to Committees/Cabinet following transfer of the Joint Committee functions.</p>
<p>7. Improve the relationship between AfC Board and elected Members/Senior Council officers.</p>	<p>The mechanism for communicating AfC Board decisions to the Council is simplified.</p> <p>Reinforce Council accountability (Make recommendations to Councils on reserved matters.)</p>	<p>AfC Board to attend (part or all) of the Ownership Board/ strategic direction meeting (as set out in recommendation 3).</p> <p>Members of AfC Board (Chair and/or Council Appointed Directors) regularly meet with owning Council Chief Executives and Lead Commissioners.</p> <p>Initiate discussions between the Council and AfC Board Members to define AfC Board terms of reference and develop a Memorandum of Understanding to codify this. Link to recommendation 4.</p>

3.16. Proposed governance as a result of implementing the recommendations is detailed below:

<p>Full Council</p>	<p>Band 1 reserved matters (Kingston and Richmond only) Company scheme of delegation/ Articles of Association.</p>
<p>Committee / Cabinet</p>	<p>Band 3 reserved matters (majority). Discharges functions on behalf of the Councils so far as they relate to the ownership of jointly owned company. Setting out the expectations and ambitions of the three Council's as owners of Achieving for Children.</p>

Stakeholder Ownership Board	<p>Twice yearly, to define strategic direction and review previous years company performance.</p> <ul style="list-style-type: none"> - Ensure that the services commissioned continue to meet the needs of local communities. - Review the AfC annual plan to ensure that AfC delivers the outcomes and quality expected within the financial remits set by the Councils.
Council Chief Executive	<p>Band 2 Reserved Matters (special resolutions) in consultation with the Leader of the Council:</p> <ul style="list-style-type: none"> - Enacts the Reserved Matters on behalf of the members at a Company meeting.
AfC Board of Directors	<p>Acts in the interests of the Company with a duty to:</p> <ul style="list-style-type: none"> - Act within their powers. - Promote the success of the company for the benefit of the shareholder(s) – in this case the councils. - Exercise independent judgement (subject to authorized restrictions/allowances provided in the articles e.g. taking into account the appointing Council's interests. - Exercise reasonable skill, care and judgement. - Avoid unauthorised conflicts of interest (conflicts with the Council's can be authorised. Declare an interest in a proposed transaction or arrangement with the company.
Operational Commissioning Group (Richmond/ Kingston) and AFC Commissioning (Windsor and Maidenhead)	<p>Contract management arrangements:</p> <ul style="list-style-type: none"> - Ensure that the performance framework is able to demonstrate the outcomes of delivery as specified by the joint Richmond/Kingston contract and separate Windsor and Maidenhead contract. - Ensure that the performance of AfC against the key service indicators meets the Councils' requirements. - Ensure that the financial performance of AfC remains within the parameters set within the contract. - Ensure that the quality of AfC Services meets the Council's requirements. - Manage the re-commissioning of services in line with changing needs.

3.17. Additionally, during the recommissioning process there will be regular engagement sessions with the Lead Members (Richmond and Kingston only). These will be held in each respective Council to ensure appropriate governance, consultation and information sharing. The aim of the sessions will be to ensure that Lead Members are able to shape the recommissioning process and specification redesign to meet sovereign priorities but also to work collaboratively reflecting the commitment to a shared contract agreement. There will be further sessions open to additional Committee members from each Council. These sessions will be led by the Lead Members and the commissioning support functions from each Council and provide the opportunity to discuss progress and address any questions or concerns that Members may have.

4. FINANCIAL IMPLICATIONS

- 4.1. There are limited financial implications to the proposals. There will be a nominal reduction in Member and officer time in attending Joint Committee.

5. PROCUREMENT IMPLICATIONS

- 5.1 There are no procurement implications of this report.

6. LEGAL IMPLICATIONS

- 6.1. There is nothing preventing the councils, as owners, revisiting the governance structure in relation to how it controls the company in order to ensure it remains satisfying the control test in Regulation 12 of the Public Contract Regulations (Teckal Exemption). The model being recommended is lawful.
- 6.2. Any amendments to the governance of the company by the councils as owners or changes to the composition of the Board of Directors, will require revisiting the Inter Authority Agreement between the Members and the Articles of Association.

7. CONSULTATION AND ENGAGEMENT

- 7.1. Owing Councils have collaboratively developed the proposed recommendations within this report. Each Council has considered the impact with stakeholders as appropriate.

8. WIDER CORPORATE IMPLICATIONS

- 8.1. There will be an impact of the proposed changes on each Council's Democratic Services. This will include the transfer of function to each Council's Committee/Cabinet structure and arrangements for the Ownership Board meetings.

9. BACKGROUND PAPERS

Implementation of Governance Review 24 June 2019

<https://rbwm.moderngov.co.uk/documents/s26744/AFC%20JC%20governance%20update%20240619.pdf>

Review of Governance arrangements 14 November 2018

<https://rbwm.moderngov.co.uk/documents/s22888/JC%20review%20of%20governance%20arrangements%20ID%20Final%20141118.pdf>

Governance 20 March 2017

<https://cabnet.richmond.gov.uk/documents/s66532/Joint%20Committee%2020.03.17%20Goverance%20Report.pdf>

Governance Review 8 February 2017

<https://cabnet.richmond.gov.uk/documents/s65957/Governance%20Review.pdf>

Governance Review 8 December 2016

<https://cabnet.richmond.gov.uk/documents/s65171/Governance%20Review.pdf>

AfC Board Governance 14 September 2016

https://cabnet.richmond.gov.uk/documents/s64014/Part%201_B_JC140916%20Board%20composition.pdf

10. ANNEXES

10.1 There are no annexes to this report

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