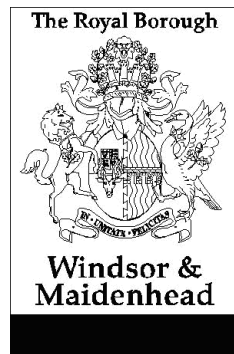


Report for: *ACTION*



<b>Contains Confidential or Exempt Information</b>	YES – Appendix 2 only – Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.
<b>Title</b>	Delivery of Children’s Services
<b>Responsible Officer(s)</b>	Alison Alexander, Managing Director/Strategic Director Adult, Children & Health Services
<b>Contact officer, job title and phone number</b>	Hilary Hall, Head of Commissioning Adults, Children and Health, 01628 683893
<b>Member reporting</b>	Cllr Natasha Airey, Lead Member for Children’s Services
<b>For Consideration By</b>	Cabinet
<b>Date to be Considered</b>	29 September 2016
<b>Implementation date if not called In</b>	11 October 2016
<b>Affected Wards</b>	All

## REPORT SUMMARY

1. On 31 March 2016, following consideration of an options appraisal and outline business case, Cabinet confirmed its commitment to delivering children’s services through a community interest company from 1 April 2017. In doing so, it delegated authority to the Managing Director/Strategic Director Adult, Children and Health Services, in consultation with the Lead Member for Children’s Services, to undertake due diligence and negotiate with Achieving for Children, a community interest company owned by London Borough of Richmond-upon-Thames and the Royal Borough of Kingston-upon-Thames.
2. This report details the due diligence activities that have been undertaken since March 2016, leading to the further development of the outline business case to secure the Royal Borough as a shareholder in Achieving for Children.
3. On the basis of the due diligence work, this report seeks approval to transfer the delivery of children’s services to Achieving for Children, effective 1 April 2017, supported by a formal Inter-Authority and Members’ Agreement. This transfer would be on the basis that the Royal Borough becomes an owner and equal shareholder in Achieving for Children.

<b>If recommendations are adopted, how will residents benefit?</b>	
Benefits to residents and reasons why they will benefit	Dates residents can expect to notice a difference
Delivery of services through an existing community interest company that is rated Good should increase quality with the ability to secure higher levels of experience throughout all tiers of the workforce.	April 2017
Delivering through a shared, established community interest company should increase the likelihood that greater financial efficiencies are secured, enabling more to be delivered for the same investment.	April 2017

## **1. DETAILS OF RECOMMENDATIONS**

### **RECOMMENDATION: That Cabinet:**

- i. Approves the transfer of children’s services and services for young adults with a learning disability under 25 years of age to Achieving for Children, effective 1 April 2017, in line with the business case at appendix 2, on the basis that the Royal Borough becomes an owner and equal shareholder in Achieving for Children.**
- ii. Approves officers to negotiate an Inter-Authority and Members’ Agreement, including reserved matters, with Achieving for Children, London Borough of Richmond-upon-Thames and the Royal Borough of Kingston-upon-Thames, for approval by Cabinet in December 2016.**
- iii. Notes the two options in respect of pension liability, see point 4.8, and agrees to adopt the same principle used for the transfer of leisure services.**
- vi. Notes the requirement for transition funding of around £164K which will be met from existing children’s services’ budgets and the continued use of the £200K allocation from the Development Fund to support this project.**
- v. Confirms that the current Strategic Director of Adult, Children and Health Services will continue to deliver the statutory function of Director of Children’s Services, see point 5.2, in order to oversee the transfer of services for the transition year, 2017-2018, with the function then transferring to Achieving for Children.**
- vi. Approves the Lead Member for Finance and the Strategic Director Adult, Children and Health Services to agree the level of resource required for support functions.**

## 2. REASON FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

### Background

2.1 At Cabinet on 31 March 2016, it was noted that actions approved in November 2015 in respect of future delivery of health services in the Royal Borough had been completed or were on track for completion. The current position is:

- The Family Nurse Partnership with Berkshire Healthcare Foundation Trust has been decommissioned, effective 1 October 2016. No new referrals have been taken since January 2016 and each of the existing clients has been transferred to other support services as appropriate.
- The school nursing service, annual contract value £190K and 3.39FTE, successfully transferred from Berkshire Healthcare Foundation Trust to the Royal Borough from 1 April 2016.
- The health visiting service, annual contract value £900K and 23.44FTE, will transfer from Berkshire Healthcare Foundation Trust to the Royal Borough from 1 October 2016.

2.2 At the same time, Cabinet considered a comprehensive options appraisal exploring how health; early help and specialist safeguarding services could be better integrated under one organisation, external from the local authority, from April 2017. This is in line with the Council's transformation programme: An Agile Council and specifically the workstream relating to delivering differently which articulates an ambition to create a 'mixed economy' approach to service provision in the future. The research and investigation into a variety of delivery models concluded that the most suitable alternative delivery model was a community interest company, because the company could:

- Be not for profit which would ensure that child protection services could be delivered by it.
- Be focussed on improving the outcomes of the communities within the Royal Borough, as opposed to making a profit, thus ensuring that the Council's strategic priorities are met.
- Have an 'asset lock' applied, which means that the company would not be allowed to distribute assets to shareholders, unless this is in an authorised payment, or to transfer assets except in limited circumstances.
- Not distribute profit to the shareholders as a dividend.
- Be Teckal<sup>1</sup> exempt, ensuring strong accountability to residents through council stewardship.

2.3 The conclusion of the options appraisal led to an outline business case that reviewed two options for a community interest company: establishing a new Royal Borough owned entity or joining an existing company. The conclusion of the business case, which was approved by Cabinet, was that the Royal Borough

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<sup>1</sup> The **Teckal exemption** enables local authorities to award a contract to a supplier without recourse to a regulated procurement procedure, when two conditions are satisfied:

- a) The local authority exercises control over the supplier that is similar to that which it exercises over its own departments (known as the "control test"). The council has power to exert decisive influence over strategic objectives and significant decisions.
- b) The supplier carries out the essential part of its activities with the local authority (known as the "function test"). This is usually interpreted to mean that a cap of 20% would apply to income generated from sources other than the local authority that controls the supplier. In instances where the supplier is controlled by multiple public bodies, the cap relates to the combined income.

should pursue the option of joining an existing community interest company, Achieving for Children.

- 2.4 Achieving for Children is a social enterprise community interest company created by the Royal Borough of Kingston upon Thames and the London Borough of Richmond upon Thames to provide their children's services. It launched on 1 April 2014, with the aim of providing children's early help, social care and education support services to their own councils, as well as other local authorities, schools and partners in the education, health, social care and criminal justice sectors. Both council's children's services are rated Good by Ofsted.
- 2.5 During the first phase, consultation with the wider children's services workforce and partners has been limited because the Royal Borough wanted to secure a definitive position in order to manage expectations. Moving into the next phase of the work will require significant engagement with key stakeholders, see appendix 1, entailing a wide range of messages for different audiences – elected Members, residents, staff and partners.

### **Business case and due diligence**

- 2.6 Between March and August 2016, the Royal Borough has been undertaking due diligence focused around a series of tests set out by the two councils and Achieving for Children. The two councils and Achieving for Children have, at the same time, been undertaking their own due diligence against the same tests:
- Legal test
  - Strategic test
  - Options test
  - Governance test
  - Financial test
  - Operational test
  - ICT test
  - Asset test
  - HR test
  - Customer test
  - Equalities test
  - Partnership test
  - Risk and rewards test
- 2.7 The Royal Borough's clear position is that it wishes to join Achieving for Children as an owner and equal shareholder. It believes that the benefits to be gained from joining the company will be better secured through ownership than through any kind of subsidiary partnership. The specific details of the Royal Borough's ownership level will be set out in the shareholding agreement between the three councils. The shareholder agreement will be developed subsequent to Richmond and Kingston's Joint Committee decision and the Royal Borough's Cabinet decision in September 2016.
- 2.8 The substantive business case, see appendix 2 (Part 2), builds on the initial outline business case produced in March 2016 and incorporates the response to the due diligence tests providing clear evidence for the Royal Borough joining Achieving for Children as an owner and shareholder. The business case is predicated on the clear belief that the potential risks of delivering differently are outweighed by the benefits, in particular:
- An opportunity to secure resources to meet residents' needs through having access to different income streams, thereby reducing the call on the taxpayer.
  - Scope for more integrated, cross-organisational – private, public and voluntary – delivery of services tailored to residents.
  - Scope to drive innovation and sustain and improve services.

- An ability to operate in a competitive market, with less rigid procurement frameworks.
- An ability to meet the required financial savings, 4% of gross operating budget, by 2020.

2.9 The due diligence exercise has concluded that there are no ‘red lines’ in terms of entering into an agreement with Achieving for Children and the two councils. The shareholder agreement will be a key document setting out the specific details of ownership levels and reserved matters. This will require specialist legal support which will be met from the existing provision of £200K made from the Development Fund in March 2016. Project management support is already in place to support the whole project and enable implementation from 1 April 2017.

2.10 The total annual budget in scope of the new delivery model for children’s services and services for young adults with a learning disability would be £92.734m gross and a staffing resource of around 277.9FTE based on current figures. Post transfer, the Royal Borough’s workforce would then stand at 769FTE. Achieving for Children would have a combined staffing complement of around 1000FTE. In addition, corporate support functions for these services are approximately £2.3m. This covers premises, ICT support, HR services, payroll, procurement, internal and external audit, occupational health, insurance, legal support and communications. The level of FTE resource to transfer to Achieving for Children in respect of support functions is still to be determined, see point 11.2.

**Stakeholder engagement**

2.11 Subject to Cabinet approval, engagement with all customers and stakeholders, internally and externally, will be crucial to the success of the transfer and work with Achieving for Children, see appendix 1 for the communications plan. It will require significant investment of time from senior managers and elected Members from both the Royal Borough and Achieving for Children. It is important that all customers and stakeholders understand how services will be delivered on a day to day basis. To that end and to form the basis of the engagement strategy, a series of “scenarios” have been developed to illustrate this in practice and these will continue to be developed and new ones added throughout the implementation phase.

2.12 The fundamental issue underpinning this transfer is to assure all stakeholders that the services they currently receive will remain local, accessible and of high quality. Elected members, residents and the workforce will also have a key role to play in shaping and further improving services through Achieving for Children.

**Table 1: Options**

Option	Comments
Deliver Children’s Services through Achieving for Children with the council becoming an equal shareholder  <b>RECOMMENDED</b>	Objective: maintain all the functions of Children’s Services with reduced resource, whilst securing high quality services that improve residents’ outcomes, building on best practice of an organisation judged Good by Ofsted.  Benefits: larger organisation, serving a combined population of 84,182 children and young people as opposed to the 35,116 in RBWM, with opportunities for efficiencies in service provision and support functions, less

Option	Comments
	<p>constrained procurement, access to alternative income streams, increased resilience with staff and services and more integration of services.</p> <p>Capacity: investment in a project manager, supported through the Head of Commissioning, with oversight from the Strategic Director and the Lead Member.</p> <p>Additional costs: transitional costs with Achieving for Children lower than establishing a new company.</p> <p>Assurance: Achieving for Children has a track record of delivery; the management team transferring are delivering against the key performance indicators; the Lead Members have a track record of delivering as has the senior commissioning function retained in the local authority.</p>
Do nothing differently – maintain delivery of services through existing council structures	<p>Objective: Maintain all children’s services within the local authority.</p> <p>The costs and existing budget remain the same, though opportunities to secure maximum value for money are reduced due to the constraints of local authority procurement rules and lack of access to alternative income streams.</p> <p>There are significantly reduced opportunities for the services to meet demand by making use of increasing freedoms and flexibilities, thus resulting in a greater risk of needing to reduce services.</p>

### 3. KEY IMPLICATIONS

3.1 The key implications of the recommendations are detailed in table 2.

**Table 2: Defined outcomes**

Defined outcomes	Unmet	Met	Exceeded	Significantly exceeded	Date they should be delivered by
Agreement report presented to Cabinet by	26 January	15 December	24 November	27 October	15 December 2016
Percentage spend of the budget to support the implementation work	>100	100 -95	94 - 85	<85	31 March 2017

## 4. FINANCIAL DETAILS

### Financial impact of the recommendations on the budget

- 4.1 The transfer of children’s services and services for young adults with a learning disability to Achieving for Children will require an associated transfer of funding under contract. This contract will stipulate how the funds will be used for services with an annual gross current value estimated at £92.7m, plus support services. A number of income streams are included in this £92.7m resulting in a transfer of net Council funds of £19.7m to Achieving for Children. The income streams are:
- £65m Dedicated Schools Grant.
  - £2.1m Public health grant.
  - £3.6m other grants, including Troubled Families, Youth Offending and early years.
  - £2.3m other income.
- 4.2 During the pre-contract period, the figures will be updated to reflect the 2017-2018 budget position. The contract sum will be subject to annual review; however, the Royal Borough would adopt the same practice as the London Boroughs of Richmond and Kingston on budget determination around demand-led services. Where there is a 10% or more increase, the councils pay the additional amount and where there is a 10% or more decrease, Achieving for Children pay the money back to the councils.

**Table 3: Finance**

<b>Finance</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>
	Revenue £'000	Revenue £'000	Revenue £'000
Addition	£0	£0	£0
Reduction	£0	£0	£0

- 4.3 There are financial implications arising from the recommendations for transition costs, estimated at a maximum of £164K, together with a pension bond should this be taken up, see table 4. Funding to meet these transition costs has been identified within the children’s services budget.

**Table 4: Transition/set up costs 2016-2017**

<b>Service</b>	<b>Detail</b>	<b>Spend</b>
		£'000
<b>Programme management</b>	Programme management across transition period including costs of stakeholder engagement	80
<b>Legal</b>	External legal advice	25
<b>Development</b>	Additional HR advice and payroll	20
	Ofsted registration*	10
<b>Finance</b>	Finance systems - development costs	12
	Pensions and actuarial advice	5
	Insurance procurement	2
	Pension Bond, see point 4.8	0

Service	Detail	Spend
Other	ICT equipment**	10
<b>Total estimated transition costs</b>		<b>164</b>

\* Contingency figure only. Can be mitigated to zero should the agency decision making power be seconded to Achieving for Children.

\*\* ICT cost covers the connection to Achieving for Children systems. The assumption is that current systems and kit continue to be used by Achieving for Children and so there would be no net financial impact on the council.

- 4.4 The detailed financial modelling and consequent impact on the budget, over the next three years, are set out in Section 4 of the business case. An initial analysis of the services such as accommodation and facilities management that are currently budgeted for within the corporate budget and recharged to Children's Services has been undertaken. Where the same services will be provided to Achieving for Children, there would be no net increase in cost, or saving, to the council. It is anticipated that a value will be assigned to these services and included in the contract sum that would be paid to Achieving for Children, and then paid back to the council. However, where the council ceases to provide a service and Achieving for Children uses its existing infrastructure, there will be a resultant increase or decrease in costs. These are outlined in Section 4 of the business case.
- 4.5 In March 2016, Cabinet approved £200K from the Development Fund to support the delivery of the project. The principal costs to date have been legal advice from Trowers & Hamlin and project management, totalling £46K.

### **Efficiencies**

- 4.6 The Council has identified a savings target for Children's Services in the Medium Term Financial Plan of £1.331m over the next three years which will need to be met regardless of the delivery model. The specific savings for 2017-2018 will be presented to Cabinet for approval on 29 September 2016.
- 4.7 Indicative areas where the next two years' savings could be met are set out in Section 4 of the business case. Achieving for Children has the opportunity, if managed effectively, to deliver efficiencies in excess of those expected should the service remain 'in-house'. This is due to economies of scale, the sharing of best practice and expertise between the partner authorities whilst increasing resilience.

### **Pension**

- 4.8 To protect the pension fund against the early termination of the service contract and any other associated costs that may arise throughout the contract, the actuary has determined that a bond or indemnity to the value of £1.86m is put in place, although the Royal Borough, as the transferring employer, can act as a guarantor to the pension fund. The council may decide to not take out a bond but to own the risk on the basis that there would be mitigations that would reduce any potential impact on it. This was the approach adopted through the transfer of leisure services.

## **5. LEGAL IMPLICATIONS**



- 5.1 The recommendations in this report are in line with changes under the Children and Young Persons Act 2008 (Relevant Care Functions) (England) Regulations 2014, allowing local authorities to delegate delivery of almost all of their social services functions relating to children on a not-for-profit basis.
- 5.2 The position of Director of Children’s Services is a statutory role and cannot, as yet, be delegated. If the Royal Borough joins Achieving for Children, there are options for the way in which the Director of Children’s Services’ role is deployed:
- Option 1: Retain the statutory function of the Director of Children’s Services in the Royal Borough as the commissioner of Children’s Services for the transition period of no longer than one year.
  - Option 2: Employ the Director of Children’s Services directly and second the post holder into Achieving for Children – either Deputy Director Health, Early Help and Safeguarding or Head of Schools and Educational Services.
  - Option 3: Invite the Director of Children’s Services for Richmond and Kingston to become the Director of Children’s Services for the Royal Borough.
- 5.3 Legal advice has been secured from Trowers & Hamlins, who are leading experts in public sector delivering services through different delivery models, see section 5 of the business case. In summary, joining an existing community interest company is legal, achievable and complies with Procurement Contract Regulations 2015 and State Aid.
- 5.4 The Best Value Duty requires the Royal Borough to undertake a consultation exercise with service users and residents on any impacts of changes to delivery of services. This will form a key part of the project between September and November, subject to Cabinet approval.

## 6. VALUE FOR MONEY

- 6.1 The business case at appendix 1 has used best value considerations to ensure the option recommended provides best value for the council.

## 7. SUSTAINABILITY IMPACT APPRAISAL

- 7.1 Not applicable

## 8. RISK MANAGEMENT

- 8.1 Risk associated with the recommendations have been identified, see table 5.

**Table 5: Risks and controls**

<b>Risks</b>	<b>Uncontrolled Risk</b>	<b>Controls</b>	<b>Controlled Risk</b>
Failure to reach a negotiated Inter-Authority Agreement by	Medium	Appointment of Programme Manager to manage next phase of the project will provide focus and control to	Low

<b>Risks</b>	<b>Uncontrolled Risk</b>	<b>Controls</b>	<b>Controlled Risk</b>
December.		deliver this by December 2016.	
Decline in service performance and resident outcomes during implementation.	Medium	Focus of senior managers on service performance and support of dedicated project manager to oversee the project.	Low
Failure to secure wider stakeholder agreement and risk of challenge under best value.	High	Implement a stakeholder engagement plan throughout the process. Focus of senior managers and elected Members on securing stakeholder agreement.	Low
Loss of staff during the implementation	High	Robust staff engagement strategy involving Royal Borough managers and Achieving for Children. Clear communications throughout the process.	Medium

## **9. LINKS TO STRATEGIC OBJECTIVES**

9.1 The recommended approach, if adopted, strongly supports all four of the council's strategic objectives; putting residents' first, value for money, delivering together and equipping ourselves for the future. Focusing on the need to sustain improved outcomes puts residents first, and collaborating with other boroughs to deliver services through a new model demonstrates commitment to deliver with others and enable staff and key partners to deliver more innovative and integrated services to residents.

## **10. EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION**

10.1 An Equality Impact Assessment has been completed.

## **11. STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS**

11.1 Total staffing numbers directly affected by the proposal are 277.9FTE. A formal programme of staff engagement will commence from publication of this report, as set out in appendix 1.

11.2 Legal opinion has been received regarding the transfer of staff under Transfer of Undertakings (Protection of Employment) regulations (TUPE), in relation to those directly employed within the service and also those employed in a support service function, providing a support service to Children's services.

- **Staff directly employed within the service to be transferred/outsourced:**  
All employees who are directly employed within the service that is being outsourced will be in scope to transfer to Achieving for Children, assuming that they were part of the organised grouping carrying out those activities as their principal purpose.
- **Staff employed in a support function, not within Children’s Services:**  
Those staff employed in a central support function and not directly within Children’s Services are not generally in scope to transfer as they are not there primarily to provide the services which will be transferring. An example would be finance staff. However, where a central support employee can be directly linked to the services being carried out, in this case a Finance Partner solely supporting Children’s Services, it is likely the employee will be in scope for transferring to the new employer. In such situations, a detailed analysis of each specific role, and a decision on each individual case, will need to be undertaken.

11.3 The Dedicated Schools Grant will transfer to Achieving for Children as an income stream but the school staff will not be transferring. Specific roles in Achieving for Children will continue to be funded by the Dedicated Schools Grant and will work with schools to maximise the impact of the Dedicated Schools Grant for Royal Borough residents.

11.4 Given the new delivery model, the Royal Borough will continue to develop the remaining workforce’s capability in strong contract management as part of the annual organisational development programme and calendar.

## 12. PROPERTY AND ASSETS

12.1 Given the outline indications regarding the workforce as well as the frontline nature of some of the services being considered, impacts on the Royal Borough’s property and assets could include:

- Changes in the patterns of static/non-static staff working bases and the effects on existing council offices – including the opportunity to relocate children’s services workforce into York House, Windsor to facilitate greater cross-authority working.
- Negotiation of lease agreements with Achieving for Children on existing council properties where Children’s Services are currently delivered.

12.2 The Dedicated Schools Grant will transfer to Achieving for Children as an income stream but school property will not be transferring.

## 13. ANY OTHER IMPLICATIONS

### ICT and information governance

13.1 Delivering through a community interest company will require ICT systems, governance and information assurance to comply with the current and future RBWM Information Governance Framework.

## 14. CONSULTATION

14.1 Consultation has taken place with:

- The Lead Member for Children's Services and Lead Member for Adult Services, Health and Sustainability at fortnightly Lead Member briefings.
- Children's Services Overview and Scrutiny Panel on 22 September 2016.
- The working group comprising senior managers in Adult, Children and Health Services, finance, HR and the Cabinet Policy Office – meetings held every Friday since 31 March 2016.

## 15. TIMETABLE FOR IMPLEMENTATION

Date	Details
11 October – 30 November	Negotiation of Inter-Authority and Members' Agreement
September onwards	Residents, staff and partner engagement.
30 November 2016	Formal agreement reached between the Royal Borough of Windsor and Maidenhead and the two local authority shareholders of Achieving for Children.
15 December 2016	Cabinet decision.
27 December 2016 – 31 March 2016	Implementation phase
1 April 2017	Children's Services delivered through Achieving for Children

## 16. APPENDICES

- Appendix 1: Communications Plan.
- Appendix 2: Business Case for becoming a shareholder of Achieving for Children incorporating requirements of due diligence (Part 2).

## 17. BACKGROUND INFORMATION

- The future delivery of health services, RBWM Cabinet Paper, November 2015.
- Cabinet Office Public Sector Mutuals Programme.
- Children's social care reform: a vision for change, January 2016, Department for Education.
- Delivery of Children's Services, RBWM Cabinet Paper, March 2016.

## 18. CONSULTATION (MANDATORY)

Name of consultee	Post held and Department	Date sent	Date received	Comments
<b>Internal</b>				
Cllr Airey	Lead Member for Children's Services	29/08/16	31/08/16	None
Russell	Strategic Director	29/08/16		

<b>Name of consultee</b>	<b>Post held and Department</b>	<b>Date sent</b>	<b>Date received</b>	<b>Comments</b>
O'Keefe	Corporate and Community Services			
Alison Alexander	Managing Director/ Strategic Director Adults, Children and Health	29/08/16	29/08/16	Throughout
Simon Fletcher	Strategic Director Operations and Customer Services	29/08/16		
Sean O'Connor	Shared Legal Solutions	29/08/16		
Terry Baldwin	Head of HR	29/08/16	31/08/16	None
Rob Stubbs	Head of Finance	29/08/16	31/08/16	Updates to Section 4
Lise Llewelyn	Strategic Director of Public Health, Berkshire	29/08/16		

## REPORT HISTORY

<b>Decision type:</b>	<b>Urgency item</b>
Key decision 31 March 2016	No

<b>Full name of report author</b>	<b>Job title</b>	<b>Full contact no:</b>
Hilary Hall	Head of Commissioning – Adults, Children and Health	01628 683893