Council
19 April 2017

Admission of a new member to the Achieving for Children Community Interest Company and Changes to AFC Governance Arrangements

Joint Report by the Lead Commissioner for Children's Services and the Head of Corporate Governance

Purpose

To endorse the proposals of the Achieving for Children Joint Committee to admit the Royal Borough of Windsor and Maidenhead (RBWM) as a full member of the Achieving for Children Community Interest Company (AfC) and the consideration to be paid for joining the AfC company. To agree a number of changes to governance arrangements for AfC, including the remit and membership of the Joint Committee.

Recommendations

On the recommendation of the AfC Joint Committee, the Council is asked to resolve that:

1. the Royal Borough of Windsor and Maidenhead (RBWM) be admitted to the Achieving for Children Community Interest Company (AfC) as a full member with effect from 1 August 2017 and that RBWM pay a joining fee to the two founding Councils, in part to recognise the costs incurred by the Councils in establishing AfC;

2. the proposed changes in governance arrangements for AfC as set out in the report, primarily relating to Reserved Matters, the AfC Board of Directors and the membership and operation of the AfC Joint Committee be approved to take effect from 1 August 2017;

3. with effect from 1 August 2017, the existing Joint Committee with the London Borough of Richmond upon Thames, established under Section 101(5) of the Local Government Act 1972, be reconstituted to include also the Royal Borough of Windsor and Maidenhead;

4. the amended Terms of Reference/Procedure Rules for the AfC Joint Committee as set out at Annex 1 to this report be adopted to take effect from 1 August 2017;

5. the Chief Executive, in consultation with the Leader of the Council and the Leader of the Opposition, be authorised to take any outstanding decisions on the details necessary to complete the transaction in line with the views of the Council and subject to legal advice; and

6. the Corporate Solicitor as Monitoring Officer be authorised to finalise all necessary legal documents, including the Inter-Authority Agreement, to effect the views of the Council and the proposals set out in this report.

Key Points

A. The full business case for admitting The Royal Borough of Windsor and Maidenhead as a new member of the Achieving for Children Community Interest Company was considered by the AfC Joint Committee at its meeting on 8 December 2016.
B. The AfC Joint Committee agreed to recommend to the founding Councils that RBWM be admitted to the Achieving for Children Community Interest Company (AfC) as a full member of the company as opposed to being admitted to a subsidiary company and subject to the terms of admission proposed.

C. Progress on the heads of terms for the admission of RBWM was reported to the 8 February and 20 March 2017 meetings of the AfC Joint Committee. The decisions on a number of technical matters remain subject to actuarial advice on pension arrangements, and legal advice on the amendments necessary to the company documentation and legal agreements to reflect the admission of RBWM; however, matters have advanced sufficiently to enable the Joint Committee to recommend the admission of RBWM with effect from 1 August 2017.

D. The consideration payable by RBWM to the two founding Councils has been considered by the Chief Executives of each Council and the AfC Joint Committee and is recommended to the Council for approval.

E. Admission of a new member (owner) of the company is a Reserved Matter but in view of the significance of such a decision it is appropriate that this matter is considered by full Council. The London Borough of Richmond upon Thames’s Cabinet has already taken the decision to admit RBWM which has also been considered by their Scrutiny Panel and will be considered by their Full Council meeting on 4 July 2017.

F. In addition, the Joint Committee has considered the outcome of a recent review of AfC’s governance arrangements and a number of changes are also recommended to Council for approval. These include the expansion of the Joint Committee to include the RBWM.

Background

1. Achieving for Children (AfC) is a Community Interest Company established and jointly owned by Richmond and Kingston Councils that started trading on 1 April 2014. One of the key benefits from establishing AfC was its ability to generate income and profit from trading with other public sector entities. In addition, by expanding the company there would be other benefits, additional service resilience, expertise and capacity as well as the opportunity to develop a more flexible and commercial approach to service delivery providing an attractive and dynamic employment offer to staff.

2. The AfC Joint Committee oversees the ownership arrangements between the owning Councils and the company. In particular, the Joint Committee considers the decisions of the company that are reserved to the owners (Reserved Matters) and gives direction to the Chief Executives to vote in a general meeting of the company to execute these decisions.

3. At its meeting on 5 December 2014 the AfC Joint Committee agreed the AfC Business Plan 2014-7 and Business Development Strategy. The plan set out a framework for growth based on an initial period of consolidation, whilst services and systems inherited from both Councils were integrated within the company, and then followed by growth and diversification through trading within the public sector.

4. AfC has successfully been working in partnership with other councils and secured contracts to provide professional consultancy and advisory services. By early 2016 AfC had developed a good reputation as an innovative and successful provider of children's services and opportunities for new business were increasing.
5. At the Joint Committee in March 2016, Members agreed the strategic position on the growth of AfC. The strategic position stated that growth could be achieved through trading or admission of a new member. A robust approach to testing expansion of membership was required and that the existing model would limit expansion to three additional members over a five year period. The Joint Committee resolved to develop the strategy and plan for growth to consider these areas in further detail. Specifically the Joint Committee agreed to develop a framework to enable the Councils to evaluate future growth opportunities including the admission of new members to the company. The framework for evaluating the future growth opportunities for AfC was considered by the Joint Committee in June 2016. The framework included an Expansion Test that set out a process for assessing growth opportunities prior to the necessary due diligence being undertaken.

6. At the same time AfC was receiving a number of informal enquiries by other local authorities exploring the possibilities of AfC becoming responsible for the running of all or part of their children's services either through a contractual relationship or by the relevant council joining the company as an owner and transferring its staff and other resources into the company that would then provide children's services back to that council.

7. The Joint Committee at its meeting in June 2016 also considered a formal request from the Royal Borough of Windsor and Maidenhead (RBWM) to join AfC. The Committee agreed that officers should proceed to evaluate RBWM's request using the Expansion Test framework.

8. The AfC Board of Directors considered the admission of RBWM into the company and assessed the issues and risks in the context of:
   - the company's business plan including the requirement for efficiency savings and the contribution that growth of the company, including the admission of RBWM, is expected to make to these savings;
   - the company's overall strategy for growth and how this may develop over the short and medium term;
   - the strategic fit of RBWM into the company in relation to both integrating its services into AfC and how the inclusion of RBWM impacts on the company's reputation and future applications for joining the company, and
   - the likely effort and cost of the admission and integration of RBWM into the company, including management capacity and associated risks, and whether the potential rewards outweigh these.

The AfC Board concluded that RBWM should be admitted to the company.

9. Following its original consideration of the request in June 2016, the Joint Committee reviewed the outcome of the initial due diligence undertaken using the Expansion Test. Further due diligence was reviewed by the AfC Joint Committee in September 2016 with the full business case for the admission of RBWM considered in December 2016.

10. The Business Case includes the following documents which were submitted to the AfC Joint Committee on 8 December 2016 and can be viewed at [this link]:
   - Annex A - Strategy for Growth;
   - Annex B – Expansion Test;
   - Annex C – Outcome of Due Diligence, together with:
   - Annex D – Scope of Services to be delivered;
   - Annex E – The Admission Model
11. On 8 February 2017 the Joint Committee resolved to recommend to both Councils that RBWM be admitted to AfC after considering the specific terms of admission that included:

- the share of ownership that RBWM and the founding Councils would have in the expanded company
- voting arrangements for decisions to be made by the owners of the company (reserved matters), and what those reserved matters should be as the company expands;
- shares of risks and rewards in the company amongst the owning Councils; and
- the consideration that RBWM should pay the founding Council’s to join the company.

12. The Joint Committee met again on 20 March 2017 to consider:

- voting arrangements for decisions to be made by the owners of the company (reserved matters), and what those reserved matters should be as the company expands;
- shares of risks and rewards in the company amongst the owning Councils
- future governance arrangements of AfC.

13. The outcome of the Joint Committee’s deliberations are set out later in this report.

(1) Proposed Terms of Admission of a New Member

- Share of the Guarantee

14. Achieving for Children is a local authority controlled Community Interest Company limited by guarantee (without a share capital). Each local authority will be an owner and subscribing guarantor. The liability is currently limited to £1 as recorded in the Memorandum of Association.

15. The AfC Joint Committee recommend that RBWM is admitted as a member of the Company holding a 20% “share” of the guarantee, with the two founding Councils sharing the remainder of the guarantee equally (ie 40% each).

16. If agreed, the Articles of Association will be amended to reflect the three owners and the liability will be amended, subject to legal advice, to reflect the share of the guarantee.

17. The share of the guarantee will also inform the voting rights of each owner on Reserved Matters.

- Consideration Payable

18. The methodology and framework for discussions with RBWM on the value of the consideration payable for admission to the AfC Community Interest Company was agreed at the Joint Committee meeting in December 2016 on the basis that RBWM would pay a consideration for joining the company to acknowledge the set up costs borne by the two founding Councils in establishing the company.

19. Discussions between the Chief Executives of the founding Councils and the Managing Director of RBWM, have continued on this basis and agreement has now been reached on an amount of £750,000 to be paid to and shared equally between RBK and LBR as the founding Councils.
Exit Arrangements

20. The current arrangements allow for the current owners (ie RBK and LBR) to give notice of resignation from the company. The leaving member would remain liable for up to one year after it ceases to be a member of the company up to the limit of its guarantee.

21. Equally the current owners can terminate the commissioning contract with AfC on a no fault basis with 12 months’ notice. There are detailed provisions in the current agreements that set out how issues such as staffing will be dealt with.

22. It is proposed that all new members joining the company cannot serve notice for a minimum of two years to allow the services and new arrangements sufficient time to be implemented.

23. It is proposed that if a member gives notice of its resignation from the company or the commissioning contract the following principles will be adopted:
   - Members will work together to ensure the continuity of service delivery in each area
   - AfC will deliver services through to the expiry of the notice period
   - Members will undertake an assessment of whether the company is still viable.

24. It is proposed that if a member gives notice on its resignation from the commissioning contract with AfC they would automatically trigger notice on its resignation from the company and vice versa. Their representatives on the AfC Joint Committee and AfC Board would step down with immediate effect.

Review of Governance

25. The findings of a recent review of the current governance arrangements were considered by the Joint Committee on 8 February and 20 March.

26. The scope of the review was broadly based and focused on:
   - reviewing the existing governance principles and the arrangements in place that enable the Councils to act as the owners of the Company and demonstrate how it meets the control test for Teckal compliance; and
   - reviewing the governance arrangements in place for commissioning and that provide assurance to the Councils that AfC is fulfilling the requirements of its contract and delivering high quality services for children and young people.

27. The scope of the review did not include reviewing the wider governance arrangements of either Council as each Council retains its own Constitution and Scheme of Delegation.

28. Work has also been undertaken to consider the proportionate governance arrangements required to meet the needs of three or more owners including the composition of the AfC Board, assurance and monitoring arrangements in relation to the services commissioned from AfC by the Councils and the accountability of the Company to the owners.
- **Reserved Matters**

29. There are currently seventeen significant decisions in relation to the company that are reserved to the Councils as owners and require a unanimous decision. The decisions in relation to Reserved Matters are currently delegated to the Chief Executives in consultation with the Leaders of each Council and then enacted at a general meeting of the Company or in writing.

30. On the admission of RBWM it is proposed that the Reserved Matters are categorised into three bandings:
   - Band 1 – decisions that require the consent of RBK’s Full Council, LBR’s and RBWM Cabinet.
   - Band 2 - decisions that are delegated to the Chief Executives in consultation with the Leaders of each Council.
   - Band 3 – decisions that are delegated to the AfC Joint Committee.

31. It is also proposed that the following additional matters are reserved to the Councils, with the authority delegated to the Chief Executives in consultation with the Leader:
   - to appoint or remove the Chief Executive of the Company in consultation with the AfC Board
   - to change the name of the Company

32. The updated full list of Reserved Matters is set out below:

   **Band One** – reserved to RBK’s Full Council and Cabinet at LBR and RBWM
   - Permit the registration of any New Member of the Company

   **Band Two**- delegated to the Chief Executives in consultation with the Leaders of each Council
   - Vary, in any respect, the Articles or the rights attaching to any of the shares in the Company
   - 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.
   - Appoint or remove the Chief Executive of the Company in consultation with the AfC Board [new]
   - Change the name of the Company [new]
   - 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.
   - Sell or dispose in any way whatsoever, any part of the business of the Company.
   - Amalgamate or merge with any other company or business undertaking.
**Band Three** – delegated to the AfC Joint Committee

- 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.

- 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.

- 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.

- Appoint or remove any auditor of the Company.

- 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.

- Adopt or amend the Financial Plan.

- 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.

- Deal with any surpluses of the Company.

- Appoint or remove any Company Directors [from the Achieving for Children Board].

- 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).

- Agreeing changes in employment terms and conditions which would be inconsistent with the National Joint Council National Agreement on Pay and Conditions of Service and any changes to the pay and grading structure of the Chief Executive post of the Company.

- **Voting on Reserved Matters**

33. Reserved Matters are currently considered at a general meeting of the Company or by means of a written approval.

   It is proposed that:

   - Band 1 Reserved Matters require the owning Councils to unanimously cast votes in favour to pass
   - Band 2 Reserved Matters require 75% of the votes of all members to be cast in favour to pass
   - Band 3 Reserved Matters require the majority of votes by the members to be cast in favour to pass.

34. Each Council’s vote, as owner of the company, will be proportionate to their share of the guarantee.
- **Board of Directors**

35. The AfC Board of Directors is the body appointed by the Councils to oversee the activity of the company. There are currently nine Directors on the Board and four categories of Director.

36. It is proposed that the categories of Director are simplified and the category of ‘Council seconded Director’ is removed.

37. To reflect a new member joining the company it is proposed that the number of Directors that can be appointed is increased, but does not exceed fourteen in total.

38. It is proposed that each member of the company can appoint up to two ‘Council appointed Directors’ and appoint a named alternative to attend in the absence of the Council appointed Directors.

39. It is also proposed that the number non-executive independent Directors is a minimum of four and no greater than six.

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<th>Proposed Categories of Directors</th>
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<tr>
<td>Executive Directors</td>
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<td>Executive Directors</td>
<td>2</td>
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<tr>
<td>Council Appointed Directors (1 per Member)</td>
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<td>Council Appointed Directors (2 per Member)</td>
<td>6</td>
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<tr>
<td>Council seconded Directors</td>
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<td>Council seconded Directors (remove)</td>
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<tr>
<td>Non-executive Independent Directors</td>
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<td>Non-executive Independent Directors</td>
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<td><strong>Total</strong></td>
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40. It is proposed that the quorum of the Board that is currently set at one NEID, one Council seconded Director and two Council appointed Directors is revised and increased to five to reflect the additional member.

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<th>Current Quoracy</th>
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<tr>
<td>Council Appointed Directors (1 per Member)</td>
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<td>Council Appointed Directors (1 per Member)</td>
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<td>Council seconded Directors</td>
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<td>Non-executive Independent Directors</td>
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<td><strong>Total</strong></td>
<td><strong>4</strong></td>
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- **Revolving Credit Facility**

41. AfC has a facility called the Revolving Credit Facility (RCF) that permits the company to borrow money from the two founding Councils. The loans are intended to be short term to assist cash flow and AfC are required to repay the loan and the costs of borrowing back to the Councils. The borrowing is shared equally between the two Councils.

42. Work is still in progress to agree the model based on three members. It is proposed the final decisions are delegated to the Chief Executive in consultation with the Leader to agree the arrangements.

- **Risk and Rewards**

43. There are a number of implications that flow from the admission of a new member to the Company and staff transferring from RBWM into AfC. These include:
   - the Company’s revolving credit agreement with the owners
   - financial risk sharing between the owners
   - pension arrangements for existing staff transferring into the Company
   - arrangements for providing support services such as HR, ICT and Audit

44. It is proposed that subject to legal advice and actuarial advice the final decisions are delegated to the Chief Executive in consultation with the Leader to agree the arrangements for indemnifying the owners against any identified financial risks.

- **Joint Committee Membership and Remit**

45. As previously indicated, the AfC Joint Committee currently oversees the ownership arrangements between the owning Councils and the company. It currently comprises six elected members, three from each of RBK and LBR and detailed Terms of Reference/Procedure Rules that have been approved by the two Councils.

46. Under the arrangements now proposed the Joint Committee will need to be expanded to include RBWM so as to comprise Members of all owning council’s and will take decisions on Band 3 Reserved Matters. It will also be expected to consider issues relating to all Reserved Matters to provide transparency and openness on matters relating to the ownership of AfC.

47. It is proposed upon RBWM joining AfC they nominate three elected Members to serve on the AfC Joint Committee and that the Leaders of each Council chair the committee meetings on a rotational basis.

48. Each individual member (owning Council) of the Joint Committee will receive one vote each. A majority of votes by the Joint Committee will be required to pass in favour a delegated decision.

49. Amended Terms of Reference/Procedure Rules reflecting the foregoing changes and other changes required as a consequence of RBWM’s admission are set out in **Annex 1** for approval.
Financial Implications

50. RBWM will pay an admission fee to the Councils but each Council will meet its own costs.

51. When AfC was being established by the two founding Council’s much of this work, particularly in relation to pensions and tax, required significant external advice and careful consideration in the establishment of AfC to ensure that the Councils were not exposed to unexpected risks. The costs of the services were shared in a transparent and proportionate manner between the two founding Councils.

52. The admission fee payable by RBWM, in part recognises the costs incurred by the Councils in establishing AfC.

53. AfC will remain a scheduled body of the Kingston and Richmond local government pension schemes. All active staff transferring from RBWM to AfC will join the Kingston and Richmond schemes in line with AfC’s pension policy. Actuary advice is being sought to ensure the transfer into the two existing schemes is equitable and does not disproportionately bring additional risk to either scheme. The transfer value will effectively fully fund pension liabilities up to the 1 August transfer date. Each Council will be indemnified by RBWM for any deficit accrued that is linked to the staff transferring from RBWM into the schemes from the date of joining.

54. The Council has included £100k targeted savings from AfC via growth through the admittance of a new partner to AfC to achieve joint management savings. The full business case that was considered by the Joint Committee in December identified the £200k savings in shared management costs that would meet the £100k target savings in each of the founding Councils.

55. AfC have also identified additional financial benefits of around £1million although some of these would be ‘non-cashable’.

Legal Implications

56. Legal advice has been provided to the Council (and the other founding member jointly) by Bevan Brittan in relation to the legal issues relating to the admission of a new member.

57. AfC, as a Community Interest Company will continue to be governed by the Companies (Audit, Investigations and Community Enterprise) Act 2004 and the Community Interest Company Regulations 2005 together with guidance provided by the CiC Regulator.

58. It is proposed that the finalisation of the changes required to vary the Articles of Association and Members’ Agreement to reflect a third member, are delegated to the Chief Executive in consultation with the Leader, and the Monitoring Officer is authorised to finalise all necessary legal documents.

Consultation and Engagement

59. Extensive consultation and engagement has been carried out by AfC and RBWM to ensure that internal and external stakeholders:

- understand the benefits of joining AfC
- are kept informed of progress and
- are involved in the design of the services to be provided for RBWM by AfC.
Risk Considerations

60. The case for change recognises the existing risks for the Council in the delivery of Children’s services via a local authority owned Community interest Company. The Teckal restrictions on the company mitigate these risks and ensure the Council remains in control.

61. The admission of a new member creates the potential for additional financial risks to the two founding Council’s in relation to the budget, expenditure and pension liabilities.

62. There are two types of budget risk – ordinary service expenditure for which it is proposed that AfC continue to take the business risk; and demand led budgets for which it is not appropriate for AfC to bear all of the business risk if events outside of AfC’s control increase expenditure.

63. For demand led budgets, the mechanism for transferring the risk to the Councils will be through the established change control mechanism in the contract whereby each case is looked at on its own merits and a variation agreed. The RBWM will have a separate contract to Kingston and Richmond to ensure there is a clear distinction between the services and the cost of services provided to RBWM and those provided to Kingston and Richmond.

64. Any overspend on demand led budgets will be ring fenced to individual Councils.

Equality Impact Considerations

65. There are no equality implications for the Council from the admission of a new member into AfC.

66. Achieving for Children as an employer has undertaken an Equality Impact Assessment as part of the preparation for providing services for RBWM. The transfer date for the staff into AfC will be 1 August 2017.

Environmental Considerations

67. There are no immediate environmental impacts from the admission of a new member into AfC.

Timescale

68. Subject to the formal decision making processes in all three Councils, the intention is that RBWM would be admitted to AfC with effect from 1 August 2017.

Background papers held by: Elizabeth Brandill – Pepper, Lead Commissioner for Children’s Services, elizabeth.brandill@kingston.gov.uk Tel No: 0208 547 5731 – Papers from the Joint AfC Committee (all available to view online or from Democratic Services tel 0208 547 4629 democratic.services@kingston.gov.uk): 8 June 2016 (Expansion Framework, AfC Business Development Strategy, Growth options appraisal, Proposals for Due Diligence Activity 14 September 2016 (Options for admitting a new member, Outcomes of the Due diligence exercise), 8 December 2016 (Governance Review methodology, Admission of a new member business case) 8 February 2017 (Governance Review findings, Proposed terms of admission for a new member) 20 March 2017 (Governance proposals, Terms of Admission for a new member update)