

## **Children's and Adults' Care and Education Committee**

12 November 2019

### **Commissioning of Children's Services - Options**

Report by the Director, Corporate and Commercial

Relevant Portfolio Holder: Portfolio Holder for Children's Services, Councillor Diane White

#### **Purpose**

The Council's initial contract with Achieving for Children to deliver services for children and young people covering early help, social care and education (Children's Services) ends on 31 March 2021. This committee received a paper in September setting out the proposed process, timescales and approach to review the commissioning arrangements for Children's Services. This report provides further detail as to the proposed options appraisal methodology and recommends reducing the options in scope for further development.

#### **Recommendations**

To **resolve** that

1. the options recommended for further development, as set out in paragraph 13 of the report, are agreed; and
2. the proposed options appraisal criteria and methodology as set out in paragraph 16 of the report are agreed.

#### **Benefits to the Community:**

It is a statutory requirement for the Council to deliver Children's Services. The process undertaken will ensure best value for money is achieved in order to address the deficit in the budget for children's services. Other services for children and young people, including school nursing and health visiting, are delivered via alternative arrangements and are not affected by the proposals in this report.

#### **Key Points**

- A. This paper sets out the steps and actions for the Council to determine its medium-term arrangements for the delivery of Children's Services. It supplements the report to this Committee received on 12 September 2019.
- B. The initial contract agreement with Achieving for Children (AfC) ends on 31 March 2021, with a recommendation for a decision on future delivery anticipated for December 2019. To ensure business continuity in the delivery of children's services in Kingston a recommissioning exercise has commenced to ensure a decision is made well in advance of the formal notice period date of March 2020.
- C. The Children's Services affected by the decision include early help, social care and education services delivered by AfC on behalf of the owning Councils.
- D. It is proposed that the decision on the delivery arrangements for children's services in Kingston beyond April 2021 are based on the criteria set out in this report at paragraph 16.

## Context

1. AfC is a community interest company wholly co-owned by the Royal Borough of Kingston (Kingston), the London Borough of Richmond (Richmond), and the Royal Borough of Windsor and Maidenhead (Windsor and Maidenhead). The company was established in 2014 with Windsor and Maidenhead joining as a member in 2017. The governance of the company is overseen by the AfC Joint Committee and Owners Board, comprised of three elected Members from each of the owning Councils.
2. Richmond and Kingston have a joint commissioning arrangement and contract. The initial term of the contract between Kingston and Richmond, and AfC is for seven years from 1 April 2014 until 31 March 2021. There is provision within the current arrangement for the contract term to be extended for five years to 31 March 2026. Windsor and Maidenhead have a separate commissioning arrangement and contract with AfC.

## Recommissioning process and activity

3. The Children's and Adults Care and Education Committee on 12 September 2019 agreed the decision-making process and for an appraisal of options to be undertaken.
4. A Kingston recommissioning officer group and a collaborative officer group with Richmond have been established to progress the recommissioning process. In addition, a separate Member briefing has been delivered to capture cross-party feedback on the recommissioning exercise and future options.
5. Activity to date includes:

Stage 1: June - September 2019	<b>Kingston and Richmond Councils agree process of separate decision making</b> Committee reports to each Council: Richmond Children's Committee - 03 June Kingston CACE Committee - 12 September
Stage 2: August - October 2019	<b>In parallel, separate and joint borough options appraisals</b> Kingston and Richmond conduct initial options appraisal activity separately and bring findings together to make a joint recommendation.
Stage 3: October - December 2019	<b>Separate and joint borough decision making</b> A collaboratively written Committee report to each Council setting out the range of options for each Council and an initial recommendation to refine the options in scope. <ul style="list-style-type: none"><li>- Richmond Children's Committee - 10 October 19</li><li>- Kingston CACE Committee - 12 November 19</li></ul>

6. Specific activity over the past month has included working with Richmond to define the options in and out of scope and to commission joint legal advice on the impact of options in scope. Financial analysis has also been commissioned to include an assessment of financial performance, demand projections and the financial impact (benefit) of different options.

## Options

7. The Council has considered the range of options available, as below:

Option 1	Extend the existing joint contract with no changes to the specification and contract schedules. Do not make any changes to the contract and company governance.
Option 2	Extend contract jointly with contract variations resulting in changes to the specification and contract schedules. Review and make changes to contract and company governance
Option 3	Recommission AfC: Terminate existing contract with AfC but initiate separate contracts and contract arrangements (two contracts) and make changes to company governance.
Option 4	In-house service (Kingston only)
Option 5	In-house service (Kingston & Richmond)
Option 6	In-house service (Kingston, Richmond & Windsor and Maidenhead)
Option 7	Bring services in-house but retain AfC for back office functions only
Option 8	Undertake a competitive tendering exercise to seek one provider able to deliver the totality of Children's Services

8. Following review of the above options, both independently and collaboratively with Richmond, three options have been defined as out of scope. It was concluded that these options do not provide the required benefits relating to: improved quality, increased service resilience and value for money. The options defined as out of scope are Option 1, Option 7 and Option 8:

### Option 1 - extend the existing contract with no change

9. Although, performance and service quality is deemed to be good and AfC has been in receipt of positive feedback arising from Ofsted inspections and focused visits, it is recognised that the existing contract and governance arrangements require review. The Education Commission<sup>1</sup> identified areas for improvement and made several recommendations in respect of the contract structure, contract management arrangements and governance. Progress has already been made in respect of these recommendations, with an update to be provided at a future meeting of this committee. However, further improvements can be achieved through a full review of the contract and the option to extend on an 'as is' basis has therefore been rejected.

### Option 7 - bring services in-house, retain AfC for back office functions

10. AfC was established to bring together children's services across two boroughs, building resilience and continuous improvement through a joint approach, and developing high quality sector expertise. Although AfC has a solid corporate core, its benefit is primarily in delivering frontline children's services, with the potential to leverage commercial opportunities to compete in the wider market rather than for provision of back office functions. Through the current contractual arrangement, a number of back office functions are already provided through sub-contracted arrangements with the Council, including ICT and HR. Therefore, it has been assessed that there would be limited benefit in retaining AfC for back office functions only.

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<sup>1</sup> [https://modern.gov.kingston.gov.uk/documents/s84099/2.2\\_rec2905\\_Annex%202\\_Education%20Commission%20Report%20PM.pdf](https://modern.gov.kingston.gov.uk/documents/s84099/2.2_rec2905_Annex%202_Education%20Commission%20Report%20PM.pdf)

## Option 8 - Undertake a competitive tendering exercise

11. There is not currently a diverse or sufficient market of alternative providers delivering the range of Children's Services provided by AfC. The majority of the market offers operational services covering particular specialisms and would not have the capacity nor capability to provide the breadth of services required by the Council. The limited number of providers of a wider range of services are not well-established in London and are unlikely to have the capacity to up-scale to deliver the full requirement in Kingston. Undertaking a full procurement process with no guarantee of achieving quality services or financial efficiency would be a significant risk and could result in new structures which fragment services for children and families. Furthermore, there is the risk that whilst the Council undertakes a complex procurement exercise, it could have a destabilising effect on service delivery in both the short and medium term. Given the demand pressures in children's social care and SEND, it would not be prudent at this time to divert resources towards a full recommissioning exercise and this option has therefore been rejected.
12. Any configuration of service delivery other than a wholesale outsourced model, comparable to the existing model with AfC, would require development of an in-house structure to oversee the commissioning and management of operational services. This will therefore be considered under the in-house options 4-6.
13. Given the above assessment, the remaining options in scope broadly fit into two categories and it is recommended that these are further developed to enable a decision on the future model:
  - recommissioning with changes to ensure each Council's ambitions for service quality and value for money can be accommodated (Options 2 and 3)
  - options to bring the service in house, either stand alone or shared (Options 4, 5 and 6)
14. Early legal advice has suggested that the five proposed options are legal but have differing impacts and risks. Financial assessment is in progress and will highlight the costs of services, projected demand and financial impact along with costs specifically associated with company ownership.

## **Options appraisal criteria**

15. In the report to Committee on 12 September, four key principles were identified in the determination of options:
  - ensuring the best outcomes for children and young people in Kingston.
  - ensuring the Council can fulfil its statutory duties to children and young people.
  - the options proposed provide value for money
  - the political ambitions for each Council are respected.
16. Following collaborative discussion with senior officers, Members and Richmond Council the principles have been adapted into criteria to judge each of the options against. These are:

<b>Outcomes</b>	
<b>Service Outcomes</b>	
1	Keep children and young people safe and protected
2	Ensuring the best outcomes for children and young people
3	Ensuring the Council can fulfil its statutory duties to children and young people
4	Provide a service that maximises independence for children and families
5	Increases the resilience and quality of core services (sharing resources, expertise and protects frontline services)
6	Effective joint working with a range of Council services and partners, Adult Services, Public Health and Community Safety.
<b>Financial Outcomes</b>	
7	Provides value for money
8	Ability to generate surpluses from external income or increases / maintains trading and income
9	Cost of change - to move from current to different delivery model
<b>Council Priorities</b>	
10	Able to deliver each Council's sovereign policies and priorities.
11	An open and transparent Council with accessible data and decisions which are subject to public debate and scrutiny
<b>Overarching Considerations</b>	
12	Social Value achievable
13	Flexibility to meet changing demand for services and changes to national and local policy.
14	Enhances (does not damage) the reputation of Councils.
15	That the option is legal and legal impact is minimal

17. It is recommended that each borough undertake its own assessment of the remaining five options against the criteria above. The Councils will then come together to consider any differences in assessment, with the expectation that a joint recommendation is made to the relevant Committee of each Council in December 2019.
18. As set out in the September Committee report, the re-commissioning of children's services is intrinsically linked with other factors. Although the criteria to assess options have been proposed, further work to define each Council's commissioning intentions is required. By commissioning intentions, we refer to the outcomes that each Council wish to achieve for children, young people and families. In Kingston these outcomes are defined within the Corporate Plan and the Health and Care Plan. These strategic policy documents are informed by the Children and Young People's Needs Assessment that forms part of Kingston's Joint Strategic Needs Assessment. The Children and Young People's Needs Assessment is under review with an updated version to be available in November 2019.

19. It is anticipated that service outcomes will be further defined between December 2019 and March 2020 and will be incorporated into the option recommended for implementation
20. Changes to the existing service delivery model will be considered following the identification of a preferred option and the outcomes the Council seeks to achieve. This will include full collaboration with Richmond, Achieving for Children and will be informed by engagement activity to be carried out as part of stage 4 of the recommissioning process.
21. Additionally, there is appetite from both Councils to review and streamline governance. Governance reviews have taken place via the AfC Joint Committee with further legal advice commissioned to determine what changes can be made. Although all options are impacted by governance, Options 1 and 2 make specific reference to governance changes, and proposals will be included within the report to Committee in December. Governance changes may include refining the work of the AfC Board and Joint Committee to increase efficiency and optimise use of senior officer and Member time.

### Timeline

22. It is recommended that a decision on future delivery of Kingston's Children's Services is reached in December 2019. This allows for a 16-month period to accommodate any changes to commissioning specification and/or delivery model prior to the expiry of the initial contract term. The next steps are as set out below:

<p>Stage 3:</p> <p>October - December 2019</p>	<p><b>Separate and joint borough decision making</b></p> <p>A collaboratively written report to both Council's Committees, recommending the preferred option with full legal advice to support.</p> <ul style="list-style-type: none"> <li>- Kingston CACE Committee- 10 December 2019</li> <li>- Richmond Children's Committee - 17 December 2019</li> </ul> <p>If the nature of the recommendation requires a Decision at Full Council this would be progressed to the next available meeting.</p>
<p>Stage 4:</p> <p>December 2019 - March 2021</p>	<p><b>Implementation</b></p> <p>Specific activity will be dependent on the chosen option but will include stakeholder and member engagement to review the governance and specification redesign.</p>

### Consultation

23. Consultation activity with key stakeholders will inform development of the recommended option during Stage 4.

### Financial Context

24. Everything the Council does needs to be seen in the context of an increasingly challenging financial environment. Kingston is not alone in its challenges, one in three of all councils fearing they will run out of funding to carry out their legal duties by 2022/23.

25. However, this position is particularly stark in Kingston. The demand for services is increasing while the funds available to meet these needs continues to fall. In 2010 the council received £66m in government grant - by 2018 that had been cut to zero. This means that it is a continual challenge to find adequate funds to meet needs.
26. The financial context in regards to Children's services is particularly challenging. According to LGA analysis there is a forecast funding gap of between £1.2 - £1.6billion in the Dedicated Schools grant nationally and 78% of English Local Authorities expect to overspend on their high needs block next year. <sup>2</sup>
27. In Kingston work continues to deliver the DSG deficit recovery transformation plan with significant savings already achieved.
28. Despite these challenges the council has a drive and commitment to ensure it is doing the best for residents and communities.

### **Resource Implications**

29. Funding has been secured for resources to manage the re-commissioning process from the Corporate Resources Panel. Longer term resources to manage the contract on a full time basis form part of a growth bid to be presented as part of the budget options and Medium Term Financial Strategy.
30. The recommissioning of Children's Services is a key decision. The commissioning budget for 2019-20 totals £49.4m. This is comprised of £30.0m for social care funded by the general fund and £19.4m for schools funded by the Dedicated Schools Grant.
31. AfC continue to meet their contribution to the Medium Term Financial plan and respond to the financial pressures in demand led areas within social care that support the most vulnerable children and young people in the borough - Children in Care and Unaccompanied Asylum Seekers. AfC have received significant financial growth in 2019-20. The current level of overspend on the DSG is not sustainable in the longer term and action needs to continue to be taken to bring this more into line with the grant allocation in the coming years whilst continuing to lobby Government for a fairer level of funding.
32. Cost analysis will be developed as part of the detailed options appraisal. The purpose of the cost analysis will be to determine the degree to which recommissioning options can be achieved within the approved budget, whether any future efficiency savings can be delivered and to determine the financial impact/benefit of each option. Full options appraisal and cost analysis will be included within the report to Committee in December 2019.

### **Legal Implications**

33. Bevan Brittan has been instructed to provide advice on the options that have been identified in paragraph 7 above. This includes revisiting Regulation 12(1) of the Public Contracts Regulations 2015 (known as the Teckal exemption) upon which both Kingston and Richmond have relied in order to commission services from AfC. This is to ensure that there is continued compliance with Regulation 12(1).

34. The original decision to award the contract to AfC allowed for a five-year extension to the initial contract term. There has been no revision to procurement legislation or the Teckal exemption that would mean that the extension could not be utilised. Draft advice has been produced by Bevan Brittan confirming that the options identified in paragraph 7 for further development are lawful.
35. Advice has also been sought from Bevan Brittan in relation to possible models of governance for AfC, both at Board Level and with regards the two Councils as shareholders of the company.
36. Further discussions will be required between the two councils with regards the contents of the draft advice with a view to seek further clarification on the points raised by Bevan Brittan and provide further instructions in order that the advice can be finalised. The final advice will feed into the work to be carried out in preparation for the report to this committee in December.

### **Risk Assessment**

37. The existing arrangements enable the Council to ensure high quality and effective children's services. Risks associated with the process of recommissioning include:
  - uncertainty for the current provider (AfC) which may impact staff morale and retention.
  - the co-owners of AfC, specifically Windsor and Maidenhead, may also be uncertain as to the impact of the recommissioning process.
38. The recommissioning activity of each Council has been collaboratively progressed with the full inclusion of each Council's Directors of Children's Services and the AfC Managing Director. Windsor and Maidenhead may also be impacted by any proposed options should they affect either the governance of Achieving for Children or the elements of AfC service that also deliver to Windsor and Maidenhead (back office functions). Councils have engaged in discussion with the Lead Commissioner of Children's Services in Windsor and Maidenhead.
39. The approach outlined in this report facilitates a decision in December 2019, in advance of the contract notice date of March 2020, which will provide all parties with early clarity regarding the future arrangements.

### **Equalities Analysis**

40. An initial equality analysis screening has been undertaken in respect of the options appraisal process. This has determined that there is not a medium or high detrimental impact arising from the decisions being recommended in this report and that the options appraisal methodology appropriately captures equality considerations. The recommended option will be subject to detailed development and equality analysis will inform its design and implementation.

### **Health Implications**

41. The options appraisal methodology outlined in this report recognises the importance of close collaboration with health agencies in the delivery of children's services, especially in the light of the SEND Transformation Plan and the implementation of the recommendations of the Education Commission.

### **Sustainability and Road Network Implications**

42. None arising from the specific recommendations of the report.

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