Children's and Adults' Care and Education Committee

10 December 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

To consider the outcome of the appraisal of the five options for recommissioning Children's Services, which were approved by the Committee for full assessment at its meeting on 12 November, and to agree a preferred option.

Recommendations

To resolve that

- 1. the recommissioning options appraisal and findings (ref. Paragraphs 8-19 of the report) are noted;
- 2. the recommendation to proceed with option 1 (ref. Paragraph 24) to extend the current contract, subject to detailed changes to the existing specification/schedules and governance) is agreed; and
- 3. the timeline set out in paragraphs 23-24 of the report for recommissioning activity and reporting to Committee is 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 recommended option for the delivery of Children's Services. It supplements the reports to this Committee at meetings on 12 September 2019 and 12 November 2019.
- B. The initial contract agreement with Achieving for Children (AfC) ends on 31 March 2021. 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.

Context

1. AfC is a community interest company wholly co-owned by the Royal Borough of Kingston (Kingston), the London Borough of 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. Kingston and Richmond have a joint commissioning arrangement and contract. The initial term of the contract between Kingston, 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.
- 3. At its meeting on 12 September this Committee approved the timescales and approach to review the commissioning arrangements for Children's Services. The 12 November meeting of the Committee approved the proposed options appraisal criteria (attached at **Annex 1**) and methodology, and agreed five recommissioning options for full assessment with detailed options appraisal:
 - (1) Recommission AfC: Extend contract jointly with Richmond with contract variations, changes to existing specifications/schedules (and governance changes)
 - Scenario: Enact the extension clause within the original contract. A shared overarching contract agreement with Richmond is retained. Work is undertaken to agree two separate contract specifications (one for Kingston, one for Richmond) and vary existing schedules to meet Kingston priorities. Any changes to service delivery would be subject to Member approval through Committee.
 - (2) Recommission AfC: Terminate existing contract with AfC but initiate separate contracts and contract arrangements (two contracts and governance changes).
 - Scenario: Give notice on the existing contract and undertake work to agree two separate contract agreements, specifications and schedules to meet each Council's priorities. Service delivery may change and be subject to Member approval through Committee.
 - (3) Bring children's services in house stand-alone Kingston only.
 Scenario: Give notice on contract with AfC and close company. Design new in-house model and initiate programme workstreams to transfer services.
 Service delivery would change and be subject to Member approval through Committee.
 - (4) Bring children's service in house (shared service Richmond)

 Scenario: As above but decision to be taken regarding shared service arrangement and establish an agreement. Appropriate governance structures to be developed and agreed by both Councils.
 - (5) Bring children's services in house (joint service Windsor & Maidenhead, Kingston and Richmond)
 - Scenario: As above but with tripartite agreement and governance.
- 4. The remainder of this report will set out a summary of the options appraisal and recommend a preferred option.

Options Appraisal

- 5. An options appraisal undertaken during October and November 2019 by Lead Commissioners in Kingston and Richmond, and the Kingston and Richmond Directors of Children's Services. Activity to date has included:
 - individual borough appraisal and moderation
 - joint Kingston and Richmond discussion of appraisal
 - joint Kingston and Richmond instruction of legal advice from Bevan Brittan and South London Legal Partnership
 - financial analysis of historic budget, projected budgets and costs associated with options completed by Kingston Finance and AfC Director of Finance and Resources.
- 6. 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.
- 7. These four principles were further developed into commissioning outcomes as set out in the report to Committee on 12 November at this link.

Appraisal

8. The table below is to illustrate briefly positive and negative impacts of the options: (Details relating to the legal and financial aspects of each option are set out in Paragraph 15.)

Option	Potential impact - positive	Potential impact - negative
1. Recommission AfC: Extend contract jointly with Richmond with contract variations, changes to existing specifications/ schedules (and governance) (Least legal	This option is able to be implemented swiftly with minimal impact on service delivery. No additional resource (above what has already been put in place) required to implement the decision or manage the arrangement going forward. Relative stability for staff and service users with continued benefit of a multi-borough model that provides resilience across the workforce. (This can be evidenced within recruitment, across the service vacancies are at a reduced level, including in areas such as Educational Psychology which nationally due to a shortage of qualified professionals.) Changes to governance can provide greater assurance to each Council regarding local priorities. Strong platform to continue delivering high quality services to vulnerable children and young people, recent OfSTED	Ongoing challenges with savings across AfC and Kingston BC, this continues to be part of the national picture but within the new contract financial management will need to be a key priority area. Contract variations will require time and focus to work through, this presents both an opportunity and a challenge, but one that will be focused on
impact and least cost)	inspection indicated positive improvements to service delivery, practice and outcomes for Children and Young People (awaiting official outcome of inspection).	enhancing the delivery of services to vulnerable children and families.

Recommission AfC: Terminate existing contract with AfC but initiate separate contracts and contract arrangements (two contracts) and governance changes. (Less legal impact and less cost)	This option is able to be implemented swiftly with minimal impact on service delivery. Relative stability for staff and service users with continued benefit of a multi-borough model that provides resilience across the workforce. (This can be evidenced within recruitment, across the service vacancies are at a reduced level, including in areas such as Educational Psychology which nationally due to a shortage of qualified professionals.) Changes to governance can provide greater assurance to each Council regarding local priorities. Strong platform to continue delivering high quality services to vulnerable children and young people, recent OfSTED inspection indicated positive improvements to service delivery, practice and outcomes for Children and Young People (awaiting official outcome of inspection).	Ongoing challenges with savings across AfC and Kingston BC, this continues to be part of the national picture but within the new contract financial management will need to be a key priority area. Additional capacity may be required to implement the decision and to manage the new contract management arrangements. Potential to drive increased management costs through the contract due to the need for two separate contract management arrangements. Practical implications of separate contracts may impact AfC operating model and limit the benefits of the existing integrated model.
3. Bring children's services in house stand-alone Kingston only 4. Bring children's services in house (joint service Kingston & Richmond) 5. Bring children's services in house (joint service Kingston & Kichmond)	Direct accountability for the delivery of children's services (though this would be shared in options 4 and 5). Direct influence and responsibility for the management and monitoring of budgets. Process to transition infrastructure, staffing, processes and policies to be brought in house within respective LA (Kingston, Richmond / Windsor and Maidenhead). This would bring opportunities to develop an in house new operating model of children's services, this would require time, investment and dynamic thinking to ensure statutory responsibilities were maintained. Delivery for Children's Services would be within LA Directorate rather than separate organisation, and therefore this increase visibility and scrutiny within Councils.	Note: options 3-5 have the most significant legal and cost impact. In addition, a sole DCS per sovereign authority will also have a direct impact on increasing budgets. Ongoing challenges with savings across AfC and Kingston; this continues to be part of the national picture but within the new contract, financial management will need to be a key priority area.
Richmond and	Each sovereign authority would require their own	These options will require a clear

Windsor &

Maidenhead)

DCS.

require a clear

Moving staff from operating within AfC to

transition programme.

a 'new operating (Note options model' will not alter 3-5 have the operational practice most significant focus but there will be legal and cost disruption as part of the impact.) disaggregation of AfC to the sovereign authorities. Although this would be kept to a minimum there would need to be a process of consultation and, staff and stakeholder engagement to build the new in house operating model which includes addressing the legal and financial infrastructure. Significant additional resources would be required to support this process. Significant governance and a shared service agreement would be

9. The outcome from the appraisal process from both Kingston and Richmond indicated a clear preference for recommissioning AfC above any of the options for bringing services back in house. Options 1 and 2 (recommissioning) were equally appraised and hence officers have further reviewed in detail the benefits, opportunities and costs associated with individual options.

required for a

multi-borough model.

- 10. Sovereign authorities have invested (and continue to invest) resources, scrutiny and constructive challenge around the current delivery model for Children's Services, this has heightened in pace in Kingston over the past year. There is evidence that outcomes are improving, service delivery is good and there is a concerted effort to manage demand growth. By taking an approach to alter the delivery model by bringing Children's Services back in house there is no guarantee that the improvement journey will continue on an upward trajectory.
- 11. The options relating to bringing services back to the council (3, 4 and 5) were assessed to have high risk around service disruption, significant cost of implementation, reduced ability to secure income, and anticipated reduction in workforce resilience and capacity. Therefore these options are not being recommended for further exploration.
- 12. The outcome of the appraisal process found that AfC is in a strong position to best support the recommissioning outcomes above any of the options for bringing services back in house.

- 13. As options 1 and 2 (recommissioning) were similarly appraised, Officers have reviewed in detail, and sought legal advice on the benefits, opportunities and costs associated with individual options.
- 14. In the report to Committee in November it was highlighted that the future option for recommissioning must be within the current budget and provide future savings. **Annex 2** of the report give details of savings, current and projected costs for each option.
- 15. The table below provides further analysis of the options focussing on the legal and financial impact of each option:

Option	Legal Impact	Financial Impact
1. Recommission AfC - extend contract jointly with Richmond with contract variations, changes to existing specifications/ schedules (and governance) (Least legal impact and least cost)	A written notice of extension and a deed of variation to accommodate changes Negotiations between Kingston, Richmond and AfC required to make changes to schedules. There may be costs to AfC for legal changes and possible nominal costs to RBWM if changes to company governance are required. Legal costs are estimated at £18,000, shared with Richmond. There are not likely to be significant staff transfer (TUPE) and pension liabilities unless substantial changes are made to the specification and services delivered by AfC.	Modest annual cost reductions are associated with streamlining company governance of approximately £26K (£23K savings in AFC and £3K cost reductions in Client costs) Internal review within RBK to ensure effective contract management arrangements. Implementation costs are estimated to be around £15K for each Council. (Including legal costs)

2.

Recommission AfC - terminate existing contract with AfC but initiate separate contracts and contract arrangements (two contracts) and governance changes).

(Less legal impact and less cost)

Written termination of the existing contract and initiation of the contract exit plan. Simultaneous renegotiation of two separate contracts to commence on the day the previous contract terminates.

May result in additional costs due to reconfiguration of the AfC workforce to accommodate the separate contracts and commissioning arrangements.

A share of legal costs of approximately £35,000 plus any additional costs as a result of the separate Kingston arrangements.

Modest annual cost reductions are associated with streamlining company governance of approximately £23K (this is less than in option 1 due to possible increased contract management).

Internal review within RBK to ensure effective contract management arrangements.

Implementation costs are estimated to be around £30K for each Council. (Including legal costs)

Options 3 - 5

Note: Options 3, 4 and 5 have the most legal and cost impact

3.

Bring children's services in house stand-alone Kingston only

Significant consultation with staff and service users required with a full impact assessment. This would require additional investment to manage the process.

Withdrawal of Kingston from the shared commissioning agreement, termination of contract and initiation of exit plan.

A process of due diligence and an insourcing agreement would also be needed.

There would be significant TUPE and pension liabilities.

Assets held by AfC (as a Community Interest Company) would be transferred back to Councils at market rate due to the asset lock which prevents the distribution of residual assets to members.

Legal costs are incremental for each option between £60,000 - £100,000 although there would

Options 3, 4 and 5

The one-off costs of change for options 3. 4 and 5 are significantly higher at around £1.4 million per option (shared between two councils). Kingston's share is estimated at £700k. There is no existing budget to cover the costs associated with options 3,4 and 5

Option 3

A Kingston only in house service, would have some modest savings in terms of company governance as Kingston would not be within a company arrangement, net of additional costs due to the removal of shared posts with RBWM and other costs. In this option, Kingston would probably need additional resources for a dedicated DCS, this would offset all the potential savings and could even be a net pressure.

In addition to the above, there are likely to be other ongoing pressures as, over the years, AFC has achieved some efficiencies joining up some teams. In the stand-alone scenario, Kingston may have to put some of this resource back.

4.

Bring children's services in house (joint service Kingston & Richmond)

5.

Bring children's services in house (joint service Kingston, Richmond and Windsor & Maidenhead be similar costs to Richmond, RBWM and AfC.

If the in house service was to be hosted by one of the boroughs this would require significant negotiation and delegation to another Council.

In option 4 and 5 shared service agreements and governance would also need to be agreed. This would need to be enshrined in a legally binding agreement and supported by operational and strategic performance and governance arrangements.

Option 4

This option would result in some savings as a result of not being in a company arrangement but they would be offset by the additional costs of the removal of shared posts and other shared costs with RBWM.

Option 5

This option initially shows a saving of £83K (per annum) as alternate governance would be created to accommodate an in-house shared service at a lower cost. Some of these savings would be non-cashable as they represent the time allocation of managing the performance of the company, time spent consolidating accounts, and other client side activities.

- 16. All options other than Option 3 (in-house Kingston only) would require effective client-side contract management arrangements to be put in place. The Council is currently estimating costs of up to £100k to support the effective management of the existing contract. It is anticipated that similar provision would be required for Options 1, 2, 4 and 5. Though Option 1 may allow the opportunity to more effectively share clientside costs with Richmond and therefore present some further efficiencies.
- 17. Option 1 would involve recommissioning AfC using the existing contract agreement and extending the contract to 31 March 2026. The schedules within the contract would be amended to reflect Kingston's sovereign ambitions, and in collaboration with Richmond and AfC, and would be enacted from April 2021 to align with the contract extension. By retaining the same overarching contract agreement there would be a reduction in legal costs.
- 18. The contract schedules, specifications and performance management frameworks would allow for local priorities to be clearly articulated and accommodate differentiation in services or service performance. It provides scope to bring services in house or add services to the specification, allow more innovation or be more prescriptive.
- 19. Whilst Option 2 would also permit differentiated services and local priorities, this would be more expensive with no evidence to suggest better outcomes for children and young people. Additionally, Option 2 may increase the reporting and commissioning requirements on AfC as there would be no shared arrangements with Richmond. A joint contract signifies a shared service delivery model which also increases service efficiency and resilience.
- 20. Options 1 and 2 allow the current operating model delivered by AfC to continue with agreed contract variations. Option 2 (terminating the current contract and establishing separate contracts) has the added advantage of ensuring that local issues and individual council priorities are foremost in the new contractual arrangements. However legal guidance has been sought and indicates that these sovereign changes can be accommodated within Option 1 (within contract schedules). The benefit of this specific point is therefore negatable when considered alongside the additional cost associated with Option 2.

Governance

- 21. **Commissioning Governance -** Contract management of the Kingston and Richmond AfC commissioning agreement takes place via the quarterly Operational Commissioning Group. Service delivery or policy changes that may impact upon Councils are discussed between senior officers with decision making through each Council's respective Committee or Cabinet (RBWM). There are no proposed changes to commissioning governance in Option 1, whereas Option 2 would allow for separate contract management arrangements. Option 3 would see Kingston Children's services become a RBK directorate and remove the need for contract management. Options 4 and 5 would require alternate shared service governance arrangements.
- 22. **Company Governance** Legal advice on possible governance changes has been sought. It is likely that costs associated with company governance could be reduced marginally; however, these are subject to discussion with Richmond, Windsor and Maidenhead and AfC. It is timely to consider the nature of company governance arrangements, as the organisation has been operating for over five years. This work will follow discussions and accommodate recommissioning detail in the new year.

Recommendation

23. Recommissioning AfC (Option 1) is therefore the recommended option, following the full options appraisal. It provides the best outcomes for Kingston's children and families. Recommissioning on the current basis, jointly with Richmond, has been found to present better value for money.

Next steps and Timeline

- 24. The following timeline is proposed to accommodate the recommended option and potential changes to commissioning specification and delivery model prior to the expiry of the initial contract term. Update reports to Committee will be in March 2020 and December 2020.
- 25. Richmond Councillors will consider their options appraisal at the Education and Children's Services Committee on 17 December. Options appraisal support, legal advice and financial analysis have been collaboratively progressed with full inclusion of the Richmond Lead Commissioner, Kingston and Richmond Directors of Children's Services. The Achieving for Children Managing Director and Lead Commissioner of Windsor and Maidenhead have been fully appraised of the options in scope and the outcome of the options appraisal shared with both.

Date	Activity
Nov 2019 – May 2020	Kingston and Richmond Councils agree on chosen option. Appointment of Joint Director of Children's Services.
	Joint Committee and individual Councils to consider and agree proposed changes to company governance.
	The Kingston Children and Young People's Needs Assessment 2019 and Kingston Children and Young People's Plan 2020-2025 define commissioning intentions.

May 2020 – Dec 2020	Includes:	
Jan 2020 – Mar 2020	Implementing service delivery changes Legal instruction	
1 April 2020	Commissioning governance and amended service delivery	

Financial Implications

- 26. The recommissioning of Children's Services is a key decision. The initial contract was agreed for seven years from 1 April 2014 until 31 March 2021, with the option to extend for a further five years.
- 27. The commissioning budget for 2019-2020 totals £27.7m. The current contract price with AFC is £49.4m and the Council retained budgets are £0.2m. The DSG and other grants and contributions fund £21.8m of the total commissioning costs. (See **Annex 3** for details)
- 28. This report includes the legal and financial analysis on the recommissioning options set out in the November report for Kingston Children's Services from 2021/22. The current arrangement ends on the 31 March 2021; the annual costs of the contract need to be within the existing approved budget and should deliver future efficiency savings.
- 29. The contract price for AfC to deliver Kingston Children's Services has fluctuated over time due to increase in demand for services and legislative changes (such as the Children and Families Act 2014 and Children and Social Work Act 2017). Details of historic and projected costs are highlighted in **Annex 2**.
- 30. The current MTFS assumes an annual increase in budget requirement for demographic growth; staffing inflation over the period to 2021/22 on the AfC contract price. The recommended option 1 would deliver savings of £26K (£23K savings in AFC and £3K in Client costs) per annum on the contract price. Projected contract costs in Annex 2 assume additional growth and proposed savings over the period which will need to be reviewed as part of the 2020/2021 budget setting exercise.
- 31. The growing deficit reserve associated with the Dedicated Schools Grant (DSG) is particularly concerning. The Council continues to lobby Government to address this position which has primarily resulted in changes introduced by The Children and Families Act 2014. A DSG budget deficit recovery plan is in place for the Medium-Term Financial Plan period 2019-2023.

Financial Context

- 32. Everything the Council does must be seen in the context of an increasingly challenging financial environment. One in three of all councils fearing they will run out of funding to carry out their legal duties by 2022/23.
- 33. 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.
- 34. Despite these challenges the Council has a drive and commitment to ensure it is doing the best for residents and communities.

Procurement Implications

- 35. Teckal case-law permits authorities to award contracts to in house bodies without conducting a full procurement if the following conditions are met:
 - that the parent authority or authorities exercise control over the delivery vehicle in a way that is similar to that which it exercises over its own departments, and
 - that the delivery vehicle carries out the essential part of its activities for the parent authority or authorities.
- 36. 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.

Legal Implications

- 37. Option 1, which is being recommended, does not compromise or impact on AfC being a company that is compliant with Regulation 12 (1) Public Contracts Regulations 2015 (also known as the Teckal exemption).
- 38. The proposed option provides a simple and relatively inexpensive method of addressing any amendments required to the current service specification and governance arrangements. The process includes extending the Commissioning Agreement entered into by Kingston and Richmond with AfC by way of written notice and varying the Commissioning Agreement the parties entered into by entry into a deed of variation in accordance with the change control procedure under schedule 10 of the RBK/ LBR Commissioning Agreement (which could be waived by agreement of the parties).
- 39. Changes made to the governance procedures may also require an update and adoption of new Articles of Association and the Inter Authority Agreement may require to be amended by way of a deed of variation to reflect the changes. Any variation to the Articles of Association would be a band two reserved matter and so would require at least 75% if AfC Members' votes to approve it.
- 40. With regards to potential TUPE implications, if it is expected that there would be no significant changes in the delivery of the services then it is not envisaged this would trigger a TUPE transfer. If there are going to be significant changes to the delivery of services consideration would need to be given to any seconded staff as there may be TUPE implications for them.

Consultation and Engagement

41. Consultation activity with key stakeholders will inform the recommissioning workstreams and specification redesign. It will ensure that stakeholders are involved in specification redesign, understand the benefits of any changes and are kept informed.

Policy Implications / Considerations

- 42. The recommissioning process will have due regard to associated legislation and policy frameworks.
- 43. The Council ensures high quality and effective children's services via the current commissioning arrangement. Risks associated with the process of recommissioning include uncertainty for the current provider (AfC) which may impact staff morale and retention. The other co-owners of AfC, Windsor and Maidenhead have been regularly informed about the recommissioning process.

Equality Analysis

- 44. An initial equality impact needs assessment (EINA) screening has been undertaken to support the recommendations of this report.
- 45. Achieving for Children have a demonstrated system of equality monitoring and assessing equality impact within service delivery.
- 46. Options 3-5 may impact children and young people due to reduced workforce capacity during a time of change. This could disproportionately impact upon groups that are over-represented within children's services cohorts. Staff within Achieving for Children would be impacted by the decision to proceed with the in-sourcing option(s) as staff would be TUPEd to the new service with associated changes to workplace / pattern. If these options were to be chosen mitigation actions would need to be developed.
- 47. Following agreement of the option to be implemented a full EINA will be conducted to detail the impact of the change.

Human Resource considerations

48. The recommended option will have a minimal impact on AfC staff. Some of the other options, as already identified in the text have much more complex HR implications. Extended uncertainty and/or lack of clear direction is likely to have a significant impact on morale and the recruitment/retention of staff. Demand for skills in Children's social work and related areas is very high and as a result a small reduction in ability to retain staff may have a higher than expected impact on AfC as a whole.

Health Implications

49. 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

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

ANNEXES

- Annex 1 : Criteria for assessing options
- **Annex 2**: AfC Summary financial outturn 2014-2019, Projected costs 2020-2026, and estimated savings with one-off costs resulting from recommissioning options
- Annex 3: Children's Services Recommissioning Equality Impact Needs Assessment

Background reports held by the author of the report: Sarah Ireland, Director, Corporate and Commercial. email: sarah.ireland@kingston.gov.uk Tel No: 0208 547 6325