



COUNCIL CABINET
13 March 2019

ITEM 2

Report sponsor: Andy Smith, Strategic Director
People Services
Report author: Suanne Lim, Service Director
Children's Integrated Services

Adoption East Midlands

Purpose

- 1.1 The report to Cabinet dated 14 February 2018 outlined the Government's intention under 2016 Education and Adoption Act that all individual local authority adoption agencies be combined into regional adoption agencies by 2020 to deliver the following;
- To provide all children with an adoptive family that meets their needs.
 - To ensure that those affected by adoption receive the information, support and advice that they need to understand their adoption journey.
 - To ensure that families are well prepared, enabled and supported to care for the children with plans for adoption.
- 1.2 On the 14 February 2018, Cabinet agreed in principle that a regional adoption agency for Derby, Derbyshire, Nottingham and Nottinghamshire councils to operate as a shared adoption service.

Cabinet agreed to delegate subsequent decision for the ensuing model and business case to the Strategic Director of People and Cabinet Member for Children and Young People and Safeguarding following consideration of a further report prepared by the strategic leads from each authority. These reports have been submitted and model and business case has been approved.

Cabinet agreed to delegate the subsequent decision on which local authority hosts the regional adoption agency on behalf of the other local authority partners to the Cabinet Member for Children and Young People and Safeguarding which has been completed. The Host Authority has been selected as Nottinghamshire County Council.

Cabinet was requested to note that it was the intention that staff from the four local authorities who are in the scope for the regional adoption service are seconded to the Host Authority, subject to the nature of the final model.

- 1.3 A strategic governance board will be established from 1 April 2019 that will:
- Act as the intermediary between the Local Authority and Adoption East Midlands.
 - Will be chaired by a Director of Children's Services from one of the partner LAs
 - Act as a forum for the Adoption East Midlands head of service to escalate and resolve or address issues and challenges.

- Act as the key strategic forum for discussion in relation to Adoption East Midlands.
- The Board will not have decision making authority, but can make recommendations to the partners, including the Adoption East Midlands budget, business plan, improvement plan and monitoring performance and quality of the service.

1.4 The outstanding matter before Cabinet is the intention that the workforce transfer to the Host authority, Nottinghamshire County Council, with effect from 1st April 2019 under the provisions of TUPE (Transfer of Undertakings, Protection of Employment) Regulations.

Recommendations

- 2.1 Cabinet should note that as a consequence of Derby City Council joining the RAA and the determined model agreed by the Strategic Director of People and Cabinet Member for Children and Young People, that there will be a workforce transfer to the Host Authority, Nottinghamshire County Council with effect from 1st April 2019 under the provisions of TUPE (Transfer of Undertakings, Protection of Employment) Regulations – subject to the outcome of formal consultation and finalisation of all relevant contractual and legal arrangements between the four local authorities.
- 2.2 To delegate authority to the Strategic Director of People, to negotiate and agree the terms of the Inter-Agency Agreement with Nottingham City, Derbyshire County and Nottinghamshire County Councils as partner authorities to establish and deliver the RAA, including the established governance board which can seek to make recommendations to the partners, but has no binding decision powers over the authorities unless agreed by all partner authorities.

Reason

- 3.1 The new body must be in a position to act as a single entity on behalf of the Partner Authorities including line management of all staff in the RAA, their deployment and performance management and influencing the recruitment and selection of RAA staff (with power of veto). This will enable swift decision making and reduce delay.

Supporting information

- 4.1 Adoption East Midlands for Derby, Derbyshire, Nottingham and Nottinghamshire has been developed within the wider partnership of the East Midlands regional adoption agency (EMRAA) project (which includes Lincolnshire, Leicestershire, Leicester and Rutland councils L3R). Options for regional adoption arrangements were considered by the EMRAA project governance board in December 2017 in the context of the preferred approach of each local authority (following consultation with lead members and directors of children's services). The strategic leads of each local authority agreed that the preferred option is to develop a formal RAA for D2N2 and a regional adoption 'arrangement' for Lincolnshire, Leicester, Leicestershire and Rutland councils.

- 4.2 This provides for a twin-track approach to regionalisation for the EMRAA partnership where Adoption East Midlands (AEM) constitutes a formal shared service and the L3R group seeks to establish protocols in respect of shared recruitment of adopters and matching children to potential families.
- 4.3 The proposed AEM Regional Adoption Agency meets the DfE requirements of a regional adoption agency. The DfE will consider the L3R proposal and determine whether there is sufficient likelihood of the future development to a full RAA. This consideration will determine the level of future funding to the EMRAA partnership.
- 4.4 The advantages of this approach include:
- maintaining the momentum of AEM partners in implementing the RAA following the positive experience of the pilot project focused on permanence teams;
 - providing an opportunity to align services across the EMRAA footprint (with the potential to include Lincolnshire, Leicester, Leicestershire and Rutland councils' adoption services at a later date subject to executive approval);
 - The development of both the RAA and the 'arrangement' will maintain a focus on service improvement and outcomes for children across the partnership.
- 4.5 An inter-authority agreement will record the nature of the partnership and the principles of joint working that will be agreed by the authorities. There is a planned review of the agreement and the operation of the agency after one year, with a break clause at three years before entering a rolling 12 month arrangement. The agreement documents the commitment by Nottinghamshire County Council to provide the adoption services on behalf of the RAA to an agreed specification, together with the commitment by Derby, Derbyshire and Nottingham City Councils to provide the child care and permanence work to an agreed specification to support the work of the RAA. The funding mechanism for the RAA, risk sharing and partner payments terms is clearly outlined. The inter-authority agreement sets out the expectation that recommendations of the partnership board will be by consensus and in the event of a dispute that cannot be resolved by the partnership board, the issue will be referred to the Chief Executives of the partner local authorities to consider. The Inter-Authority Agreement also details arrangements to dissolve the partnership and provide for the proposed governance structure.
- 4.6 The Project Governance Board, in consultation with lead Members and Directors of Children's Services, considered the potential options available for the transfer of staff to AEM, namely secondment or TUPE transfer of staff to the host local authority. After considering the legal advice obtained, it was agreed that staff would transfer to the Host Authority under the principles of TUPE. A review of staff in scope, conducted across the four local authorities in September 2018 identified 81 full-time equivalent staff in scope for the RAA. Derby City Council has identified 14.6 full-time equivalents (FTE) to transfer.

Public/stakeholder engagement

- 5.1 Each local authority within the proposed partnership has held engagement events, as well as informal consultation/information sharing meetings with staff and trade unions. Derby City Council held an event on 26 September 2018, sharing the rationale for the forming of an RAA as well as the implications for staff in the event of proceeding on the basis of a transfer of staff under the TUPE Regulations. Initial due diligence has been provided to Nottinghamshire County Council in order to assist them in establishing any measures which may be required and formal consultation was held on 13 November 2018.

Other options

- 6.1 The DFE has stated that there is now a national expectation that all Local Authorities will form a Regional Adoption Agency by 2020. A range of models has been considered with the one proposed in this document appearing to offer the best potential to meet local need.
- 6.2 Alternatives may include joining a different RAA but this would add further distance to visiting and supporting children in placement and the money that has been provided by DFE to help with the project management costs was provided to the East Midlands local Authorities to work together.

Financial and value for money issues

- 7.1 A three-year indicative budget of £5,324,917, £5,187,859 and £4,530,859 for years 1 to 3 of RAA operation.

The proposed contribution by Derby City Council is a total £2.827m of over a three-year period. Contributions per year are:

- Year 1 £1.022m
 - Year 2 £959k
 - Year 3 £846k
- 7.2 The reduction in years 2 and 3 assumes AEM will make £0.795m savings by reducing the cost per unit of adoption orders. Each authority's share is dependent on their individual unit cost. Derby City Council will receive a higher benefit compared to other partners due to a high unit cost. To note that these future years' allocations are indicative.
- 7.3 The contributions include a 7.5% management charge (£0.076m) relating to central back office functions on behalf of the lead authority.

Legal implications

- 8.1 Where TUPE applies the contracts of employment of affected staff automatically transfer from the Transferor to the new employer (the Transferee). The Council is obliged to inform and, where necessary, consult with the elected representatives of those employees affected by the transfer. The transferring staff transfer with the majority of their rights and obligations intact. TUPE does not apply to all aspects of pensions, but the proposed transfer includes provisions that will allow all staff to remain with LGPS.
- 8.2 In 2015 the Department for Education (DfE) reported that local authorities must work towards Regional Adoption Agencies (RAA) by 2020. This is enshrined in the Education and Adoption Act 2016 (the 2016 Act) which gave the government a power to direct a local authority to enter into a RAA. The Act amends the Adoption and Children Act 2002, (the 2002 Act) so that local authorities are no longer required to maintain an adoption service within their area, but may secure provision by other local authorities or registered adoption agencies.

The new section 3ZA of the 2002 Act, gives the Secretary of State the power to direct individual local authorities to make arrangements for adoption functions, including:

- (a) the recruitment of persons as prospective adopters;
- (b) the assessment of prospective adopters' suitability to adopt a child;
- (c) the approval of prospective adopters as suitable to adopt a child;
- (d) decisions as to whether a particular child should be placed for adoption with a particular prospective adopter;
- (e) the provision of adoption support services to be carried out by another local authority or one or more adoption agencies on their behalf, through the formation of regional or sub-regional adoption agencies.

Other significant implications

- 9.1 None identified.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Karen Griffin & Paul McMahon	11 March 2019
Finance	Alison Parkin	11 March 2019
Service Director(s)	Suanne Lim	11 March 2019
Report sponsor	Andy Smith	11 March 2019
Other(s)		