



DERBY CITY COUNCIL

**COUNCIL**  
**21 January 2009**

Report of the Corporate Director of Corporate  
and Adult Services

## **FOSTERING PANEL**

### **RECOMMENDATION**

1. To note the report

### **SUPPORTING INFORMATION**

- 2.1 At its meeting on 19 November 2008 Council noted the report on the Chief Executive's urgent non-executive decisions which included a decision to appoint Councillor Hird as the member representative on the Fostering Panel replacing Councillor Allen.
- 2.2 At the same meeting it was resolved to instruct the Director of Corporate and Adult Services to investigate the legal position with regard to the appointment of the elected member representative on the Fostering Panel and report back to the next meeting of the Council. This report is to fulfil that requirement.
- 2.3 Since the introduction of the new "Cabinet" style constitution in 2000 until June of this year our advice has always been that the member representative on the Council's Fostering Panel must be the Cabinet Member for Children & Young People (C&YP) or the equivalent predecessor's position.
- 2.4 That advice was based on an interpretation of Section 13(2) Local Government Act 2000 and the Regulations made under it (Local Authorities (Functions & Responsibilities) (England) Regulations 2000).  
They basically say two things:
  - That all functions of a local authority **must** be the responsibility of the Executive **unless** there is an express provision to the contrary in the Regulations.
  - That social care functions are not non Executive matters, as they are not listed as such in the Regulations.

Therefore the view was taken that the fostering panel, like other social care matters, was an executive function and the panel member should be the Cabinet Member with such responsibilities.

- 2.5 When the issue was looked into again this June it was discovered that a number of other Councils with social care responsibilities did not apply such a strict interpretation and did not insist on the elected member on the panel being the relevant Cabinet Member.
- 2.6 This more relaxed view was seemingly justified on two counts; firstly the Fostering Services Regulations 2002, which stipulate the make up of the panel, merely say that a local authority member must be an “elected member”. It does not require that it must be the relevant Cabinet Member.
- 2.7 Secondly, though fostering is an executive function it is argued that as the fostering panel is not a decision making body it does not have to have an executive (cabinet) member on it.
- 2.8 These two justifications, seem to indicate that any elected member could be the Council’s representative on the fostering panel, though the British Association for Adoption & Fostering (BAAF) recommends that the Council representatives should be on the Council’s Corporate Parenting body (titled “Corporate Parenting Sub Commission” in Derby).
- 2.9 Indeed there is a view, shared by the BAAF, that the member representative on the panel should **not** be the relevant Cabinet Member as this could lead to a potential conflict of interest where, for example, a foster carer complains about some aspect of the fostering service, as such a complaint would be considered by the Fostering Panel.
- 2.10 There is also concern about possible undue influence where the member representative is the relevant Cabinet Member. The argument being that the senior officer who makes final decisions on fostering matters (The “Agency Decision Maker”) may be unduly influenced by a recommendation from a panel that includes the Cabinet Member with whom he/she will probably has a close working relationship.

## CONCLUSIONS

- 3.1 That the Local Authority representative on the Fostering Panel has to be an elected member but not necessarily the Cabinet Member.
- 3.2 There are concerns from professional bodies that it is not appropriate for the member representative for it to be the Cabinet Member .
- 3.3 The decision of the Chief Executive to appoint Councillor Hird to be the local authority representative, which was signed off by the three party leaders, is lawful and effective.
- 3.4 If and when making any future appointment Council will have to be mindful of the amount of time required to devote to the task of being a fostering panel member and other commitments on the Cabinet Member for C&YP which are likely to increase following the Baby “P” case.

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<b>Background papers:</b>	None
<b>List of appendices:</b>	Appendix 1 – Implications

<b>IMPLICATIONS</b>
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**Financial**

1      None

**Legal**

2      As set out in the report

**Personnel**

3      None

**Equalities Impact**

4      None