

EXECUTIVE BOARD – 19th JUNE 2018

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| Subject: | The Development of the Regional Adoption Agency |
| Corporate Director(s)/Director(s): | Alison Michalska - Corporate Director, Children and Adults |
| Portfolio Holder(s): | Councillor David Mellen – Portfolio Holder for Early Intervention and Early Years |
| Report author and contact details: | Helen Blackman – Director of Children’s Integrated Services Helen.blackman@nottinghamcity.gov.uk |
| Subject to call-in: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| Key Decision: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| Criteria for Key Decision: | |
| (a) <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision | |
| and/or | |
| (b) Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| Type of expenditure: <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital | |
| Total value of the decision: £961,000 in 2018/19 | |
| Wards affected: All | |
| Date of consultation with Portfolio Holder(s): | |
| Relevant Council Plan Key Theme: | |
| Strategic Regeneration and Development | <input type="checkbox"/> |
| Schools | <input type="checkbox"/> |
| Planning and Housing | <input type="checkbox"/> |
| Community Services | <input type="checkbox"/> |
| Energy, Sustainability and Customer | <input type="checkbox"/> |
| Jobs, Growth and Transport | <input type="checkbox"/> |
| Adults, Health and Community Sector | <input type="checkbox"/> |
| Children, Early Intervention and Early Years | <input checked="" type="checkbox"/> |
| Leisure and Culture | <input type="checkbox"/> |
| Resources and Neighbourhood Regeneration | <input type="checkbox"/> |
| Exempt information: State ‘None’ or complete the following None | |
| Recommendation(s): | |
| <ol style="list-style-type: none"> 1. to agree in principle that a Regional Adoption Agency for Derby, Derbyshire, Nottingham and Nottinghamshire councils be established to operate a shared adoption service; 2. to agree that a detailed business case regarding this proposed model between the four local authorities be prepared by the strategic leads from each local authority, and that a further report be submitted to The Executive Board to agree the Business Case; 3. To endorse the hosting offer made by Nottinghamshire County Council as the most appropriate option to progress this development; 4. To agree that further work be undertaken to finalise the position regarding the workforce that move into the Regional Adoption Agency. | |

1 REASONS FOR RECOMMENDATIONS

- 1.1 The Government has stated its intention that all individual local authority adoption agencies be combined into regional adoption agencies (RAAs) by 2020. The rationale is that, with 180 adoption agencies placing children in England, the system is too fragmented, and this has led to delay for children. Regionalisation should improve outcomes for children, adopters and adoptive families.
- 1.2 Provision has been made in the Education and Adoption Act 2016 (amending the Adoption and Children Act 2002), to ensure that regionalisation takes place. The Secretary of State “may give directions requiring one or more local authorities in England to make arrangements for all or any” of their adoption functions “to be carried out on their behalf by one of those authorities, or one or more other adoption agencies.” To date six regional adoption agencies have been established in England which provide services to 30 local authorities. The vast majority of local authorities in England are engaged with the funded programme for regionalising adoption. The minister has recently written to every local authority in England to re-state the government position that all authorities are expected to be members of a Regional Adoption Agency by 2020.
- 1.3 The principles of regional adoption agencies are:
 - 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.
- 1.4 The aims are to ensure:
 - Early identification of children for whom adoption is the right option
 - Timely placement of children including sibling groups and older children
 - Sustainable placements with timely and appropriate support as needed
 - A sufficient range and number of adopters to meet children’s needs
 - A range of different adoptions placement types e.g. foster to adopt
 - A well performing and improving service, evidenced in the adoption scorecard, productivity and timeliness.
- 1.5 Seven local authorities (Lincolnshire, Leicestershire (also provides adoption services for Rutland), Leicester, Derbyshire, Derby, Nottinghamshire and Nottingham) began participation in the DfE funded RAA programme in October 2015. The East Midlands Regional Adoption Agency (EMRAA) partnership also includes three voluntary adoption agencies (Faith in Families, Family Care and Coram).
- 1.6 EMRAA has made good progress in developing adoption functions which draw on excellent and innovative practice. Developments include the setting up of permanence teams in many of the partner local authorities and in establishing the D2N2 pilot for Derbyshire, Derby, Nottinghamshire and Nottingham. Good progress is also being made in aligning ways of working in respect of adopter recruitment, matching and adoption support across the EMRAA footprint.

- 1.7 BDO, the financial consultants engaged by EMRAA, reviewed the local authorities spend on adoption activity. This work provides the basis to set out the business case for the D2N2 RAA.
- 1.8 One of the key principles of the D2N2 model is that it will be delivered at no additional cost to the authorities involved

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 The D2N2 RAA is being developed within the wider partnership of the East Midlands regional adoption agency (EMRAA) project (which includes Lincolnshire, Leicestershire, Leicester and Rutland councils). 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.
- 2.2 Effectively this provides for a twin-track approach to regionalisation for the EMRAA partnership where D2N2 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.
- 2.3 The proposed development of the D2N2 RAA 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.
- 2.4 The advantages of this approach include:
 - maintaining the momentum of D2N2 partners in developing 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.

Governance of the RAA

- 2.5 Following consultation with lead members and DCSs and a full options appraisal of the possible legal forms - a local authority shared service, a local authority trading company or a joint venture with voluntary adoption agencies - the EMRAA Project Governance Board recommends that the D2N2 RAA should be delivered as a shared service between the participating local authorities. Further details of the governance arrangements for the operation of shared service will be included in a future report to The Executive Board.
- 2.6 The Project Governance Board has identified Nottinghamshire as the preferred host in early 2018 based on an appraisal of the offer from each local authority. Their adoption service is judged to be good by Ofsted and they are currently managing the Project Manager so are best placed to undertake this role.

- 2.7 The Project Governance Board and their equivalents in other authorities recognises that, subject to the Executive Board agreeing these plans in principle, a detailed business case will be required, setting out how the model will work both at strategic and operational level. Once agreed by the Project Governance Board, the proposed Business Case will be submitted to a future Executive Board.

Staffing the RAA

- 2.8 Approximately 80 full time equivalent staff from across the four local authorities are in scope to deliver the functions of the RAA, of which 16 are Derby City Council staff, 24 are Derbyshire County Council staff, 13 are Nottingham City Council staff and 30 are Nottinghamshire County Council staff. Further work is planned to finalise the position in relation to staffing
- 2.9 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 the RAA, namely secondment or TUPE transfer of staff to the host local authority. Further work is underway in order to enable an informed decision regarding the implications in terms of the workforce to be identified.
- 2.10 Following the agreement in principle of the Executive Board, a full staff consultation and engagement plan will be developed.

The remit of the RAA and potential benefits

- 2.11 The D2N2 RAA will, as a minimum, provide the following adoption services:
- Tracking of children for whom adoption may be the plan for permanence. The establishment of permanence teams within each of the D2N2 local authorities provides a standard model which will inform the RAA on the potential needs of the child early in the planning process and enable improved targeted recruitment of adoptive families. Earlier, appropriate, placement of children is likely to reduce spend on looked after children budgets.
 - Recruitment of adopters to meet the needs of D2N2 children for whom adoption is the plan for permanence.

The D2N2 group of local authorities placed an average of 282 children for adoption per year between 2012 and 2015 of which 57.5% were placed with adopters from the home authority. An average of 104 children per year (37%) were placed with adopters from local authorities outside the EMRAA partnership or with voluntary adoption agencies.

An analysis of inter-agency costs and income for the year 2015-16 indicates a net expenditure on inter-agency adoption placement fees of £1,537,000 for the D2N2 group, Nottingham City's element of this is £282k.

If an additional 8 children per year are placed in house each year (increase of 5%) the inter-agency placement costs will reduce by approximately £256k. Given that the RAA will provide a greater pool of adopters (and based on the experience of shared adoption services in the North West and London) it is reasonable to expect that this figure can be reached and exceeded.

Increasing the number of children placed in house is also likely to assist in improving outcomes for children through the provision of local timely and appropriate adoption support to families.

- Panels for approving adopters.

Work is underway to understand the frequency of the current panel arrangements and the costs to the local authorities. This work will inform the full business case for the D2N2 RAA. However, it is reasonable to expect that the greater scale provided by a shared service will assist in reducing panel costs as well as reducing delays to decision making.

- Adoption support

The D2N2 group of local authorities spent £1,347,000 supporting adopted children and adoptive families in 2015/16 (including staff costs). Nottingham City's staffing costs for post adoption support will be dependent on the final decision regarding what is and is not delivered by the RAA but, based on the current most likely model are £67,931. The non-staff costs for adoption support during this period was £325k of which £210k was funded by the Adoption Support Fund. Access to the Adoption Support Fund will cease in 2020.

The D2N2 RAA is likely to assist in sustaining (or improving) adoption support provision through economies of scale and joint commissioning of therapeutic support.

2.12 Further discussion and analysis is required to determine whether the remit of the RAA should include the following functions:

- Adoption allowances
- Letter box (post adoption contact)
- Step parent and inter-country adoptions
- Foster to adopt and concurrent adoption placements
- Addition Panel functions (e.g. matching and agency decisions, legal and medical advice)

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

3.1 As indicated above there is a legal requirement to form the Regional Adoption Agency. A range of models have been considered with the one proposed in this document appearing to offer the best potential to meet local need.

4 FINANCE COLLEAGUE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT) **(Christine Green – Senior Commercial Business Partner)**

4.1 The project aims to deliver the RAA within the current funding envelope for staffing for recruitment, matching and adoption support services. The total budget for the D2N2 group is in the region of £7m per annum.

4.2 There is ongoing financial modelling to finalise the funding formula for participating local authorities. In addition, the learning from established RAAs supports this. The Project Governance Board continues to receive support from the DfE coach who periodically attends Project Governance Board meetings.

- 4.3 Nottingham has submitted an indicative budget of £0.961m based on the 2018/19 Adoption budget. This excludes a number of functions that are still under review such as adoption allowances.
- 4.4 The EMRAA is still embryonic and further analysis is required to ascertain costs that are more accurate. These include:
- 4.4.1 Start-up costs
 - 4.4.2 Exit costs
 - 4.4.3 Redundancy and pension strain costs
 - 4.4.4 Inflation factors
 - 4.4.5 Other services in scope
- 4.5 There is developments grants from the DfE to help establish the RAA. This funding may offset some if not all the start-up costs to avoid any cost to participating local authorities or voluntary adoption agencies. The DfE will consider an application to re-profile the project funding in the context of the proposed twin-track development for EMRAA.
- 4.6 A Risk Register is essential to capture potential risks and where quantified, associated costs. The following should be considered in addition to the points highlighted in 4.4:
- 4.6.1 Any legislative or guidance changes
 - 4.6.2 Any other changes to service delivery which is impacted by issues, for example, IT Services
- 4.7 Robust governance arrangements are required that identify how performance is managed. Regular reviews are essential to quantify the risk and rewards to the Partnership and individual Local Authorities, for example Inter-agency placement costs.
- 4.8 Further financial detail will form part of the detailed business case to follow.

5 LEGAL AND PROCUREMENT COLLEAGUE COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

Employment-related Legal Comments (John Bernard-Carlin (Team Leader (Litigation, Employment & Education Team))

- 5.1 Underpinning any proposed new arrangement will be the statutory basis for doing so. The statutory basis for entering into the arrangement will impact on issues including the application of TUPE. It should therefore be established whether the statutory framework for the establishment of the RAA is:
- A direction under Section 3(ZA) of the Adoption and Children Act 2002 (as amended) ('2002 Act'). Section 3(ZA) allows for the Secretary of State to give a direction requiring one or more local authorities to enter into joint arrangements in relation to their adoption functions (essentially the establishment of a regional adoption agency).
 - An arrangement under Section 3(4)(b) of the 2002 Act, Section 3(4)(b) allows for a local authority to make arrangements with another local authority for the provision of its adoption services/functions.
 - Another basis for the proposed arrangement.

- 5.2 These legal comments are provided on the current assumption that the proposed RAA arrangements will be established under Section 3(4)(b) of the 2002 Act. Clarification is requested as to whether this assumption is correct.
- 5.3 Further detail is needed with regard to the proposed delivery model and current and proposed staffing structures (and full workforce information) in order to establish the position as to whether this is a situation where TUPE will apply and to then consider and advise on the options (and related risks) with regard to staffing arrangements. It is recommended that the position in relation to TUPE and related matters (and related financial and legal implications (including pensions implications (see 5.4 below)) should be taken into account in consideration of the decision as to whether to proceed to join the proposed RAA.
- 5.4 Detailed consideration should also take place with regard to the pensions implications of the proposed RAA including any financial implications arising from addressing current LGPS fund deficits.
- 5.5 When information has been gathered as referred to at paragraph 5.3 above, consideration will need to be given as to any staffing restructuring processes that may be required and the implications of any such processes.

Children's Social Care Legal Comments (Claire Knowles, Team Leader, Children & Adults Legal Team)

- 5.6 To assist with the background to what was initially a government backed initiative, in 2015 the Department for Education (DfE) reported that local authorities should be working towards Regional Adoption Agencies (RAA) by 2020. Their commitment to this approach is such that the Education and Adoption Act 2016 (the 2016 Act) 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.
- 5.7 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.

- 5.8 Further detail around what the proposed local RAA will look like is still to be discussed and agreed, but in addition to other matters recorded above, the professional roles of the current legal advisers and medical advisers to the existing Adoption Panels, will need to be considered. In particular, the legal

adviser role, as this is currently provided by my team to the Agency Decision Maker and also the Adoption Panel. Consideration is required around who will provide legal advice to the panels held under the RAA and who will own that advice, the RAA 'host' authority or individual local authorities?

**Contract and Procurement comments - Andrew James, Team Leader
(Contract and Commercial)**

- 5.9. The contractual and procurement arrangements necessary to establish the RAA will depend ultimately on the legal basis chosen for the delivery model. If the RAA is established in accordance with a direction from the Secretary of State it will not be necessary to undertake a procurement to appoint the other local authorities to provide the adoption functions. Notwithstanding the lack of a requirement to procure the other authority a contract would be required setting out each party's roles and responsibilities.

If the RAA is established in accordance with either of the second or third bullet points set out in paragraph 5.1 above then the choice of which other local authority to provide the functions could (in theory) be subject to the procurement rules. However, as it is very likely that the City Council would be co-operating with the other local authorities a procurement process should not be required as co-operation to deliver public services is exempt from the Public Contracts Regulations 2015. A contract would be required as above to set out the party's respective roles and responsibilities.

- 5.10. As the establishment of the RAA is likely to change the way in which the City Council delivers its adoption functions it will be necessary for the City Council to undertake a public consultation with affected stakeholders. The timescales for undertaking the consultation should be included in the project programme.
- 5.11. Further advice will be provided by the Legal Services team to support the project team as the proposals are developed.

6 HR OBSERVATIONS – Lynn Robinson, HR Business Partner,

- 6.1 It is noted that work has been ongoing within the D2N2 Group (Derbyshire, Derby City, Nottinghamshire, Nottingham City Councils) and the L3R (Leicestershire, Leicester City, Lincolnshire and Rutland Councils), since October 2015. A regional EMRAA HR Group established in January 2018, has been tasked to consider workforce options and associated employment risks for the delivery of shared adoption services. It has also, subsequently been noted that this would be based on a host organisation model, which has been identified as Nottinghamshire County Council.
- 6.2 In order to provide employment advice on the implications to the Council, and the employees potentially affected by the proposals, the EMRAA HR Group is working with their respective legal advisers and service officers to clearly identify those employees that are in scope, based on the work activity that the shared adoption model intends to operate and deliver on. Once this work is completed, further advice can be provided on the potential options, with associated benefits and risks.
- 6.3 Consideration is to be given to the potential application of Transfer of Undertakings Protection of Employment (TUPE) Regulations, and or other

proposed arrangements for deployment of staff. In any event, full and formal consultation with the workforce, and recognised trade unions, in all respective local authorities will need to take place.

- 6.4 It is strongly recommended that a risk register is produced in terms of any potential costs to the Council as a result of either the transfer of employees to a host arrangement, or any alternative model of delivery. In addition, the potential risks of costs incurred as a result of any transfer, subsequent restructures or exit strategies, and a robust agreement about how such costs will be managed/met across the region.

7 STRATEGIC ASSETS & PROPERTY COLLEAGUE COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE)

There are no planned changes to in relation to staff location so therefore this is not applicable.

8 SOCIAL VALUE CONSIDERATIONS

This is a decision that relates to how we manage elements of the adoption service. There is no obvious social value impact.

9 REGARD TO THE NHS CONSTITUTION

Not applicable.

10 EQUALITY IMPACT ASSESSMENT (EIA)

- 10.1 Has the equality impact of the proposals in this report been assessed?

No



An EIA is not required at this stage because: A key priority of the RAA will be to ensure appropriate ethnicity and cultural matches between adopters and children, ensuring all health needs and equality issues are fully addressed through the adoption support offer and a strong focus on long-term positive outcomes for children for whom adoption is the plan for permanence. When the position regarding staffing will be developed.

Yes



Attached as Appendix x, and due regard will be given to any implications identified in it.

11 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)

None

12 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT

Adoption and Social Work Act 2017