Rotherham Metropolitan Borough Council

Public Report
Cabinet

Committee Name and Date of Committee Meeting
Cabinet – 23 December 2019

Report Title
South Yorkshire Regional Adoption Agency

Is this a Key Decision and has it been included on the Forward Plan?
Yes

Strategic Director Approving Submission of the Report
Sally Hodges, Interim Strategic Director of Children and Young People's Services

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Ward(s) Affected
Borough-Wide

Report Summary

In June 2015 the Department for Education (DfE) reported that local authorities should be working towards Regional Adoption Agency (RAA) model by 2020. There was an expectation that local authorities would begin planning, developing and working with partners to shape their RAA. The DfE's commitment to this approach was such that the Education and Adoption Act 2016 gave power to the government to direct a local authority to enter into a RAA (or a partnership with a Voluntary Adoption Agency) if they deemed that there was insufficient evidence of engagement in the process.

Rotherham MBC has been a member of the project group to develop the South Yorkshire Regional Adoption Agency alongside colleagues from Sheffield City Council, Doncaster Children's Services Trust and Barnsley Metropolitan Borough Council since the DfE directive. DCST was identified as the host agency at the start of the process given that it was the only Adoption Service rated as being 'Good' by Ofsted at that time and given that under its Trust status it was also a Voluntary Adoption Agency.

The key principle behind the regionalisation of adoption services was that, on a national level, children were waiting far too long to be matched and placed with their adoptive families. By pooling resources, adoption agencies would be more likely to increase the choice of prospective adopters and therefore identify matches more

quickly and thus reduce the time that these children remained looked after in the care of the local authority. As a result the driving force for the initiative was very much to improve the outcomes for looked after children with a permanence plan of adoption.

Rotherham MBC has remained significantly involved in the development of the Business Case (c.f. Appendix 1) throughout and from the start of the process set down 3 essential criteria as a pre-condition for signing up to it, namely:

- No reduced performance
- No increased costs
- No negative impact on the Terms and Conditions of our employees

It is accepted that this version of the Business Case comes the closest to meeting each of the essential criteria. RMBC will remain heavily involved in order to continue to shape the model to ensure it will best meet the needs of children and families in Rotherham.

It also has to be recognised that 75% of local authorities have already implemented a regional model of adoption. Furthermore, it has to be acknowledged that that the Secretary of State has retained within the legislation the right to impose a model on any local authority it deems not to be progressing the regionalisation agenda with sufficient pace and has set April 2020 as a deadline for local authorities to have an agreed model in place. It is a reasonable assumption to make that any model imposed by the DfE will result in a far more significant transfer of resources to the SYRAA in real terms.

Recommendations

1. That the business case be endorsed to enable the Council to work towards a regionalised model of adoption services in accordance with the Department for Education's expectations.

List of Appendices Included
Appendix 1 South Yorkshire Regional Adoption Agency Business Case V14
Appendix 2 Initial Equality Screening Assessment
Appendix 3 Equality Analysis Form

Background Papers
None

Consideration by any other Council Committee, Scrutiny or Advisory Panel
Overview and Scrutiny Management Board – 20 December 2019

Council Approval Required
No

Exempt from the Press and Public
No

The South Yorkshire Regional Adoption Agency

1. Background

1.1 In June 2015 the Department for Education (DfE) reported that local authorities should be working towards Regional Adoption Agency (RAA) model by 2020. There was an expectation that local authorities would begin planning, developing and working with partners to shape their RAA. The DfE's commitment to this approach was such that the Education and Adoption Act 2016 gave power to the government to direct a local authority to enter into a RAA (or a partnership with a Voluntary Adoption Agency) if they deemed that there was insufficient evidence of engagement in the process.

1.2 The Government vision behind the regionalisation of Adoption Services was to accelerate the pace of change to ensure those children, for whom adoption is the right path, were given the best chance of finding a loving, permanent family as quickly as possible. The DfE provided start-up funding to support local authorities to take forward their proposals. However, due to the length of time required to reach an acceptable proposal across South Yorkshire, additional funding had to be sought from the DfE to secure further project management resources.

1.3 Rotherham MBC has been part of the development of the South Yorkshire Regional Adoption Agency (SYRAA) since the publication of this government paper and from that point on set down their 3 essential criteria for full sign up to the SYRAA model:

- No increased costs to the local authority
- No negative impact on the current performance levels being achieved RMBC Adoption Team
- No adverse impact on the terms and conditions of employment for our employees

1.4 At the instigation of the SYRAA project, Doncaster Children's Services Trust (DCST) was allocated host organisation responsibility given that it was a Voluntary Adoption Agency (VAA) by virtue of its status as a Trust and as it was the only adoption service rated as 'Good' by Ofsted at that time.

1.5 As the original host authority, DCST led on the production of the SYRAA Business Case. However, until this proposed version earlier drafts did not meet the above criteria set out by RMBC. As a result the position has been maintained that until a mutually acceptable business case was agreed, RMBC was not in a position to sign up to the RAA. Doncaster Children's Services and Barnsley MBC have, for a variety of reasons, always been more inclined to endorse previous models and they currently are in the process of seeking political approval.

1.6 There remains some underlying concern that balancing the budget for the SYRAA will depend on a significant growth in identifying, assessing and approving prospective adoptive parents for which there can be no cast iron guarantee. However, this financial risk has to be counter-balanced by the fact that, if RMBC does not evidence that it working towards a regionalised model of adoption by April 2020, then the DfE has the legal right to impose a model of their choosing. It is highly likely that such a model will result in a far more significant change in service delivery, including the potential for staff to have to undergo the TUPE process, with a similar lack of guarantee regarding the financial risks continuing to exist.

2. Key Issues

2.1 It is clear that Version 14 offers the least amount of change to the current model of service delivery and is a proposal that we hope will be acceptable to DfE so that the establishment of the RAA can go forward. The stated objective of the SYRAA is to deliver 130 adopters and place 154 children annually. Given that in 2017/18 all four authorities only managed to recruit 76 adopters and place 137 children this will be a significant challenge but one that the shared resources and expertise stemming from regionalisation was always intended to deliver.

2.2 In respect of the impact on staff this will be minimal as none of the Adoption Team will move from their current location and they will remain employees of RMBC. They will not experience the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) process as was mooted in earlier versions. The only identified impact will be noted by the two team managers who will report to a new line manager within the RAA central hub based in Doncaster. The Business Support will similarly be provided on a locality basis and equate directly to the current level of Business Support provided to the existing Adoption teams.

2.3 In respect of performance, each area Adoption Team will continue to provide adoption assessments, family finding and post-adoption support whilst the local authority will retain responsibility for 'Should be Placed for Adoption' and matching decisions as well as for any adoption allowances. However, by having a larger pool of adopters to select from it is envisaged that the timescales especially for the 'Hard to Place' children, including sibling groups, older children and children with a disability or from a BME background will be reduced. Where specific legal or HR advice is required this will be provided by the local authority within which the issue has arisen i.e. where specific legal advice is required this will be provided via the case managing local authority.

2.4 It is reasonable to assume that performance within the SYRAA is likely to surpass that of each individual authority given the opportunities to have shared recruitment meetings, joint recruitment campaigns and marketing opportunities and the potential to reach a wider target audience by sharing marketing ideas. Identified best practice models from each individual organisation will also be adopted across the SYRAA in order to ensure that, as far as can be reasonably expected, performance within all existing measures will be expected to improve.

2.5 Formal governance of the SYRAA will be provided through the South Yorkshire Regional Adoption Agency Partnership Board (SYRAAPB) which will be responsible for providing oversight and challenge in respect of the impact of the co-operation agreement. This agreement allows each of the four partner agencies to have equal voting rights in respect of the SYRAA functions via their membership of the Board which will formally meet four times per year (c.f. appendix C in the Business Case). The Partnership Board will provide oversight of the partnership agreement and will present an annual report to the local authority partner Cabinets, review the strategic objectives of the SYRAA and monitor and challenge the service delivery and performance being achieved. The SYRAA will provide the Partnership Board with a quarterly report detailing service delivery performance, financial performance and audit and assurance activities as well as a review of the joint working arrangements and Ofsted readiness. The Chair of the Partnership Board will rotate on an annual basis with the voting representatives being the DCS from each local authority and the Chief Executive from DCST. There will also be an Annual Review Meeting involving the respective DCSs and Lead Members which will be chaired by an as yet undetermined Independent Chair.

2.6 Furthermore, by being more cost effective (e.g. reduced Panel overheads) there will be the potential to facilitate larger scale and more visible advertising at better negotiated cost - the aim being to reach a wider target audience of potential adopters. This may include:-

- More regular and larger scale family finding activity days with shared costs.
- Shared duty, initial contact and visits which will provide a more responsive approach.
- Shared drop in/information events which could mean that there are information sessions on a weekly basis providing more choice for potential adopters to attend. This in turn should speed up the assessment and approval process.
- Shared training in order to provide adopters with far greater consistency. The model being offered will be that of RMBC which is recognised as being an area of outstanding practice by Ofsted.
- A greater consistency in respect of adoption allowances across the region.
- Shared resources such as the Children's guides, preparation materials for children and adopters and transition planning.
- Shared agreement of exchange of adopters for harder to place children which would mean no interagency fees within the South Yorkshire region. The SYRAA may then also be in a position to negotiate a mutual exchange of adopters within the Yorkshire and Humber One Adoption hub on a no fees basis.
- Pooling of all recruited adopters in order to accelerate the matching process and minimise delays for children in being placed with their adoptive families.
- Greater understanding of children with an adoptive plan across the region without losing the local knowledge when tracking children (the loss of local knowledge was a significant risk identified in Leeds Beckett University risk analysis research for the RAA). This will facilitate more targeted recruitment and marketing campaigns and

ensure that the adopters recruited are more able to meet the needs of children in the region.

- A shared tracking of children would improve timeliness of Permanence Plans being achieved for the children across the region as well as locally.
- Pooling this knowledge could lead to potential targeted recruitment campaigns and identification of post adoption support needs. For example if it became apparent that there a high number of children with disabilities across the region, a targeted campaign could be implemented to recruit specifically for these children whilst considering additional post adoption support needs.
- A greater opportunity for informal post adoption support such as service user support groups creating a wider opportunity for adoptive families.
- Shared learning from Best Practice to ensure that the SYRAA as a whole becomes a more efficient and effective service in the region.

2.7 The financial model now proposes that each Local Authority and the Trust retains its own 2020/21 Adoption budgets adjusting for the identified savings to enable a contribution to the SYRAA to fund the central costs. If the RAA achieves its stated objectives in respect of adopter recruitment and children placed RMBC should achieve some financial benefits arising from a reduced cost of Inter-agency fees which are charged at £31k for one child and £50k for 2 siblings for example. In addition there should be some other costs benefit such as of these children spending less time in care and therefore requiring less social work and Independent Reviewing Officer (IRO) resources.

2.8 The SYRAA Partnership Board will be ultimately responsible for managing the budget of the SYRAA and will therefore have to raise with the respective local authorities in response to any actual or projected overspend. Each member of the SYRAA will have Finance Manager representation on the Partnership Board in order to ensure as far as is practicable that the forecasted budget savings to be accrued from shared innovations and marketing opportunities are being realised or that remedial action is taken at the earliest opportunity.

3. Options considered and recommended proposal

3.1 The model proposed in this version of the Business Case is the only current viable model identified after an extended period of consideration and negotiation. As a result, the only other option available at this point in time is not to accept this model and risk the DfE imposing an even less ‘Fit for Rotherham’ model upon the South Yorkshire region. Whilst there are still some outstanding issues with the model, the window of opportunity available to progress and model through the full approval process is becoming increasingly narrow.

3.2 As a result Cabinet is recommended to endorse the proposal that RMBC sign up to Version 14 of the Business Case. This will enable officers to engage in the further more detailed development work that is required in order to ensure that there is a fully fit for purpose model in place by the deadline of April 2020 as set by the DfE.

4. Consultation on proposal

4.1 This proposal has been written collaboratively between RMBC, DCST, SCC and BMBC as led by the project manager appointed by DCST and funded by the DfE. In addition the DfE have been fully consulted to ensure that the proposed model fits their requirement for a regional model. There have also been regular meetings held with the Adoption Team to update them with any progress of the developments and the Trades Unions have been fully consulted and updated throughout the process. Furthermore, adoptive parents have been involved in the consultation process throughout the development of the model to ensure it would best meet the needs of people undergoing the adoption route.

5. Timetable and Accountability for Implementing this Decision

5.1 Rotherham MBC and the other three authorities within the South Yorkshire hub will have to evidence to the DfE that there is a viable model in place by April 2020 if it is not to have a model imposed on it.

5.2 The Head of Service for Looked After Children will be responsible for implementing this decision.

6. Financial and Procurement Advice and Implications

6.1 The proposed RAA operational budget requirement before any adjustments is £5.028m of which RMBC will contribute £1.353m (27%), see table below for details.

	Operational Budget (inc. Business Support) £'000	**Business Support** (central costs) £'000
Rotherham	1.353m	39k
Barnsley	1.003m	31k
Doncaster	1.240m	35k
Sheffield	1.432m	30k
Total	**5.028m**	**135k**

6.2 Additional central staff resources of £145k have also been identified. The funding of the increased additional costs will be offset by the anticipated savings in subscriptions and through efficiencies in the panel process to mitigate the central costs. A more detailed summary of the specific savings is to be issued by the RAA project manager early December.

6.3 The proposal is for the four authorities to retain their budget allocations adjusting for the identified savings stated above to enable a contribution to the SYRAA to fund the £145k of central costs. Implementation of the SYRAA in this way potentially enables Rotherham to review our current adoption spend and identify any potential cost reductions, subject to regional approval.

6.4 Whilst RMBC's proposed budget contribution is within the current cash limit and would not create any additional costs based on the business case, clarification still remains around how any underspends or overspends generated by the SYRAA would be allocated to the four members.

6.5 Options on the basis for any split of over / underspends are still to be confirmed but maybe on a proportion of the authorities contribution (RMBC 27%) as identified in the business case. The allocation of over and underspends are still being considered due to the light touch implementation and individual LA's actions which could lead to savings or cost pressures and whether these should be retained by the individual partners.

6.6 Further clarity is also required on operation of the Adoption Support Fund which is undertaken by members of staff in the Therapeutic Team and external providers in Rotherham, but only external providers in other LA's.

6.7 A partnership arrangement is currently being written by Barnsley MBC which will need to be agreed by all partners.

6.8 The detailed procurement implications are provided below at Section 7.

7. Legal Advice and Implications

7.1 As stated above, in June 2015, the Department of Education set out proposals to move to regional adoption agencies in its paper 'Regionalising Adoption'. The paper sought to kick start the move to regional adoption agencies on a voluntary basis and set out:

- the key challenges the adoption sector still faces;
- ideas for what regional adoption agencies might look like; and
- what the DfE would offer to accelerate the development of regional adoption agencies and next steps for those interested in being

7.2 The Education and Adoption Act 2016 put the move to regional adoption agencies on a statutory footing. Section 15 inserted a s3ZA to The Adoption and Children Act 2002 which provides that;

"(1)The Secretary of State may give directions requiring one or more local authorities in England to make arrangements for all or any of their functions within subsection (3) to be carried out on their behalf by—

(a) one of those authorities, or

(b) one or more other adoption agencies.

(2)A direction under subsection (1) may, in particular—

(a) specify who is to carry out the functions, or

(b) require the local authority or authorities to determine who is to carry out the functions.

(3)The functions mentioned in subsection (1) are functions in relation to—

(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."

7.3 The Government now requires all local authorities to be part of a regional adoption agency by 2020 otherwise the powers under The Education and Adoption Act 2016 will allow the Department of Education to impose such arrangements.

7.4 The carrying on of adoption services by the Doncaster Trust on behalf of Barnsley MBC, Rotherham MBC and Sheffield CC is a 'Procurement' caught by the application of the Public Contracts Regulations 2015 (the Regulations). Accordingly, the Trust would normally be expected to compete for the right to be awarded the work, as part of a procurement exercise under the Regulations. There is no guarantee that this would result in the preferred arrangement.

7.5 The Trust currently carries out Adoption Services functions on behalf of Doncaster MBC under the Direction of the Secretary of State. It is an adoption agency and a 'public contracting authority' for the purposes of the Regulations. Detailed consideration has been given as to whether the Trust can be directly appointed to carry out the adoption services for Barnsley, Rotherham and Sheffield, as opposed to having to bid as part of a procurement exercise. The conclusion of Barnsley, Rotherham and Sheffield legal advisors is that they may rely on an exemption set out in Regulation 12(7), which was enacted to capture the essence of the ECJ judgment in *Commission v Germany* (Case C-480/06), known as the *Hamburg* exemption. Under this exemption Barnsley, Rotherham and Sheffield will be able to enter into a cooperation arrangement with the Trust, on the proviso that all the requirements set out in Regulation 12(7) are met and the general principles of the *Hamburg* judgment are satisfied. These requirements are set out below:

- There is no private sector party to the agreement;
- The co-operation is governed solely by considerations and requirements relating to the pursuit of objectives in the public interest;
- The character of the agreement is that of real co-operation aimed at the joint performance of a common task, as opposed to a normal public contract;
- It enables the public service activity to be carried out more effectively;
- There are mutual requirements for co-operation with "give or take" between the parties;
- Payment is related to the reimbursement of costs (and is not based on the generation of profit);

- The arrangements are not contriving to circumvent the procurement rules.

7.6 In the proposed arrangements it is considered that the above conditions are met and as such, the Regulation 12(7) exemption applies. Therefore no procurement exercise is considered to be required and the Trust may be appointed to carry out this work for Rotherham MBC on the basis of the proposed collaboration agreement.

8. Human Resources Advice and Implications

8.1 A HR work stream group was established with a representative from each Authority to look at the specific HR implications. It was agreed that a Service Level Agreement/Memo of Understanding (intention of change) will be issued in the initial stages of the business planning. Staffs terms and conditions will remain with the Local Authority they work for. The senior line management will change, as would the Head of Service. This will have implications on the current staff members within these posts that will be addressed through consultation.

9. Implications for Children and Young People and Vulnerable Adults

9.1 The introduction of a RAA is designed to improve the quality and timeliness of the adoption process for looked after children and prospective adoptive the outcomes for those children should be improved.

10. Equalities and Human Rights Advice and Implications

10.1 The RAA model proposed is designed to meet the rights to a family life for more looked after children from Rotherham.

11. Implications for Ward Priorities

11.1 None noted

12. Implications for Partners

12.1 The impact on partners is not identified as being of any significance given the relatively light touch of the changes in working arrangements for the current Adoption Team.

13. Risks and Mitigation

13.1. There is a risk that if the SYRAA is not progressed in an appropriate manner then the DfE may impose a model on the region. The risk is that this model may not best meet the needs of employees of RMBC or of it's looked after children and be less likely to meet the three essential criteria as set out in the main body of this report. There is a further risk that the SYRAA will not meet the performance targets in respect of adopters recruited and children adopted and that this will therefore present RMBC will an additional financial burden.

13.2 This risk will be mitigated by senior officers from RMBC continuing to work as part of the Partnership Board to ensure that the model is implemented in as most efficient and cost effective manner as possible.

14. Accountable Officers

Sally Hodges, Interim Strategic Director of Children and Young People's Services
Ailsa Barr, Assistant Director
Ian Walker, Head of Service

Approvals obtained on behalf of Statutory Officers:-

	Named Officer	**Date**
Chief Executive	Sharon Kemp	12/12/19
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	29/11/19
Head of Legal Services (Monitoring Officer)	Bal Nahal	28/11/19

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This report is published on the Council's website.