

Meeting of the Cabinet – 6th December 2018

Report of the Strategic Director People

Regional Adoption Agency

Purpose

1. To present the detailed case for creating a new Regional Adoption Agency - Adoption@Heart, and to seek agreement on the proposed governance arrangements, financial model and funding arrangements, and implications for Council staff.

Recommendations

2. It is recommended that Cabinet:-
 - Approve the establishment of the Regional Adoption Agency (RAA).
 - Approve the service design, structure and governance of the RAA as a 'hosted' model
 - Approve City of Wolverhampton Council as the host authority for the RAA and TUPE transfer of staff into City of Wolverhampton Council to work within the RAA.
 - Approve the proposed financial model and formula for funding contributions from the four Councils.
 - Approve the establishment of a Lead Members RAA Board to enable Lead Members from the four Councils to collectively execute their responsibilities in respect of monitoring outcomes for children in care.
 - Delegate authority to the Lead for Law and Governance, in consultation with the Director of Children's Services, to enter into and authorise all necessary deeds, contracts and other related documents to implement the above recommendations.
 - Approve the necessary technical delegation of functions under section 3ZA subsection 3(c) Adoption and Children Act 2002 (the approval of prospective adopters) to Wolverhampton City Council for the purpose of ensuring the proposed RAA arrangements work and operate as agreed.

Background

3. The new Black Country RAA will combine the adoption services for the local authority areas of Dudley Metropolitan Borough Council (MBC), Sandwell MBC, Walsall MBC and City of Wolverhampton Council. The project is led by the City of Wolverhampton Council, with the RAA planned to go live on 1st April 2019.
4. The development of RAA is part of the Department for Education's (DfE) national regionalising adoption programme. All local authorities (LAs) are expected to deliver their adoption services through an RAA by 2020. Funding has been secured from DfE to cover the costs of setting up the new arrangements for the Black Country.
5. In March 2018, Cabinets in Walsall MBC and City of Wolverhampton Council approved the following recommendations:
 - Approve the establishment of the RAA
 - Approve the service design, structure and governance of the RAA as a Local Authority Trading Company, including transfer of staff into the new organisation.
 - Approve the financial model and funding formula.
 - Approve the governance arrangements.
 - Delegate authority to the Cabinet Member for Resources and the Cabinet Member for Children and Young People in consultation with the Director of Finance and Director for Children's Services to make further decisions specifically relating to:
 - a) The finalisation of arrangements for the delivery of support services to the RAA, ensuring that the 'back office' costs are funded by Local Authorities and the RAA has a viable balanced budget.
 - b) Final cash flows for the RAA.
 - c) The development of an agreed funding protocol between the Local Authorities/Trust to enable the functioning of the funding formula, including tolerances and arrangements for spot purchasing to accommodate variations in numbers of placements required.
 - d) Arrangements for transferring budgets to the RAA during the 2018-2019 financial year to minimise exposure of either the Local Authorities or the RAA to risks of overspend.
 - e) The development of a risk sharing agreement between the four Local Authorities/Trust and the RAA, with appropriate governance for LAs to hold the RAA accountable.
 - f) Authorising Adoption@Heart officer director appointments as appointments to an external body.
 - g) Taking any and all decisions including without limitation the approval of all documents to enable the RAA to be incorporated; and
 - h) Taking any and all necessary shareholder decisions required following incorporation.
6. A paper concerning RAA proposals was approved by Dudley's Cabinet in June 2017. Officers did not take a report to Dudley's Cabinet in March 2018 as the

proposals were not financially viable at that time and further work was required with partners. Sandwell's Cabinet also delayed consideration of the RAA proposals, as that Council was in the process of transferring its Children's Services to a new Children's Trust, in line with a direction DfE, and this became operational on 1 April 2018. In November 2017, the shadow Board of Sandwell Children's Trust approved a proposal to join the RAA, and the first four recommendations above.

Consultation

7. A stakeholder engagement strategy is in place and there has been active consultation with stakeholders throughout the project to inform the detailed model presented in this report, including council elected members, staff, and adopters. Voluntary Adoption Agencies (VAs) are actively involved, in line with DfE expectations.

Benefits of developing a Regional Adoption Agency

8. A number of benefits are anticipated to accrue to Dudley from participation in the proposed Black Country RAA, both because of the opportunities for total re-design of the service, and because of the combined service's larger scale

9. **Anticipated Benefits – Efficiencies**

- Reduction in LA expenditure on fostering placements (and practitioner time)
- Reduced expenditure on adoption panels
- Decreased use of inter- agency placements
- More children identified for adoption through improved permanence planning.

10. **Anticipated Benefits – Quality of Practice and Outcomes**

- Improved permanence planning for children
- Increased placement choice from a larger pool of adopters
- Reduction of placement days from children entering care to being placed with their adoptive family
- Fewer children for whom the permanence plan changes away from adoption
- A wider range of support services for adoptive families, promoting stability and reducing disruption
- More adopters approved and swifter matching of adopters with children.

The RAA form and implementation of the new service

11. It has been agreed between the participating authorities that the RAA will be "hosted", or delivered, by one LA on behalf of all four LAs. This arrangement is a change from the model that had previously been agreed, under which the RAA would have been developed as a separate entity, a Local Authority Trading Company LATC, wholly owned by the four Councils, but in May 2018, concerns were raised about some of the complexities and uncertainties of establishing a

LATC for the RAA, as well as additional costs to the Councils resulting from the company being unable to recover VAT on services it purchased. As a result it was agreed look at the feasibility of a “hosted” model as an alternative.

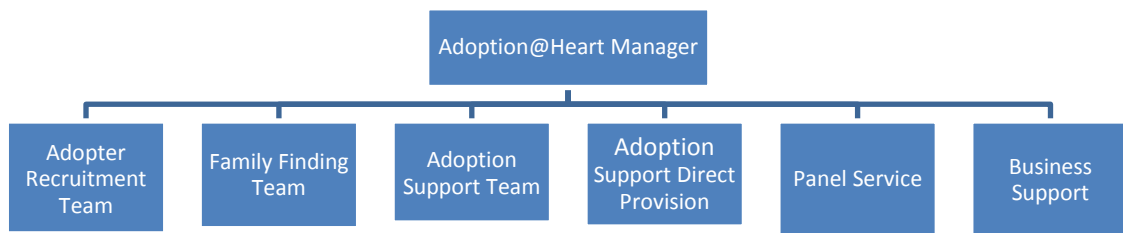
12. In June, the RAA Project Board considered the findings of the review and recommended instead a move to a hosted model for the Black Country RAA, to be known as Adoption@Heart, on the basis that this would be a less risky approach given that delivering the RAA via a separate entity is relatively untested. It is understood that these factors mean that no other part of the country has decided to go down the LATC route. A hosted model will also be less resource intensive to deliver and will avoid irrecoverable VAT on purchases. The move to a hosted model was subsequently agreed by the four Directors of Children’s Services (DCS’s).
13. A due diligence and evaluation process then took place in June and July 2018 to agree which Council would act as host, expressions of interest having been received from both Dudley MBC and City of Wolverhampton Council. This process produced a recommendation to DCSs that Wolverhampton act as host, which was unanimously agreed by that group.
14. In September 2018, the Association of Black Country Authorities (ABCA) Chief Executives Group, and the Chief Executives and Leaders Group, endorsed proposals in respect of the service design, structure and governance of the RAA as a ‘hosted’ model. This would involve City of Wolverhampton Council acting as host, the TUPE transfer of relevant staff from the other three Councils into City of Wolverhampton Council, and the proposed financial model and formula for funding contributions from the four Councils.

Design of the new service and operating model

15. The development of the RAA provides the opportunity to design a new service from top to bottom, and a whole range of new and innovative practice will enable the required efficiencies and improvements to be delivered. The RAA will deliver the following services:
 - Support and challenge to child care teams in assessing children’s needs and early identification of children for whom an adoption plan is suitable.
 - Early Permanence Placements.
 - Child preparation and life story work.
 - Recruitment and approval of adopters including Panel.
 - Purchase and sale of inter-agency placements to achieve the best match.
 - Family finding and matching.
 - Matching Panel.
 - Pre and post approval support for adoptive families.
 - Birth Family support including Letterbox.
 - Support for adopted adults – access to records and counselling.
 - A non-agency adoption service.
16. The service specification also sets out the related delivery responsibilities which will remain with the LAs (primarily those relating to the children), to ensure that the whole system works effectively.

17. The service design and operating model is now complete. There will be teams for dedicated delivery of adopter recruitment, family finding and adoption support services, with a Panel service working alongside. There will be a central hub, in Pendeford, helping to build the identity and culture of Adoption@Heart, as a single cross-Black Country Service, whilst maintaining a local and accessible presence via 'spokes' in each borough, keeping staff and service user travel time to a minimum. Practitioners will be equipped to work flexibly, making use of 'hot desk' arrangements in LA office bases. The proposed high level staffing structure for the RAA is shown below, with the Adoption@Heart Manager reporting to the Head of Looked After Children, City of Wolverhampton Council.

18.



19. VAs will be an integral part of the RAA, via a contract both to deliver identified services, and as contributors to the RAA's strategic direction through a role on the Adoption@Heart Management Group.

20. The required support services arrangements for the RAA will be delivered by City of Wolverhampton Council, against a service specification for the required functions (Finance, HR, ICT support etc.).

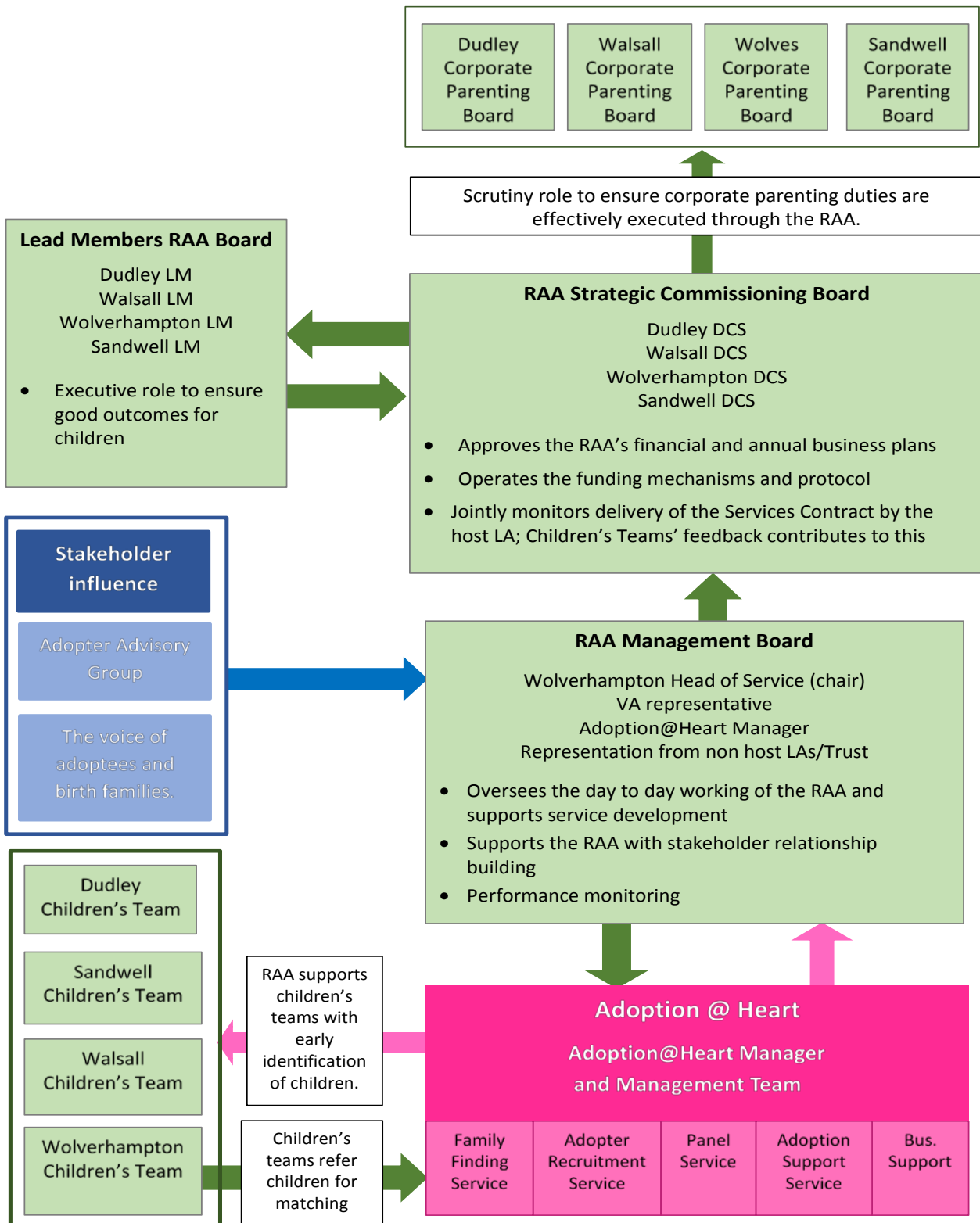
21. The RAA will have a bespoke case management system. Management and sharing of data between the partner organisations will be agreed, taking account of General Data Protection Regulations (GDPR), and appropriate information governance, information sharing and data protection arrangements will be in place.

22. Transitional arrangements to ensure continuity of front line services as adoption services move from the LAs into the RAA are being developed.

Governance and accountability of the Regional Adoption Agency

23. The diagram below shows the governance arrangements for the Black Country RAA.

Adoption@Heart Governance Arrangements – Hosted Model



24. A Strategic Commissioning Board will be formed with representatives from all organisations jointly commissioning the RAA, with Dudley MBC taking the lead on behalf of all four Councils (and Sandwell Children's Trust) in the interests of transparency. The Board will be responsible for monitoring the performance and

delivery of the contract by the RAA and will be governed by an agreement which will include shared arrangements for funding, access to resources and risk sharing.

25. A services contract will contain the service specification detailing the services to be delivered, the payment terms and performance monitoring arrangements. An Outcomes and Performance Monitoring Framework has been developed to monitor the performance of the RAA against the agreed contract. Other agreements will also be in place, in particular around information sharing between the LAs and the RAA in line with Data Protection and security. The Strategic Commissioning Board will also monitor the funding agreement between LAs and provision of placements by the RAA to the respective LAs/Trust and resolve any conflicts between competing interests of the participating LAs.
26. In addition, the Councils will be discharging their statutory responsibility to provide adoption services by allowing for the delivery of certain functions to be contracted out to the RAA, and will want to exercise a scrutiny role over the delivery of those services. This function will be fulfilled by each LA's Scrutiny Committee and/or Corporate Parenting Boards, and also through a Lead Members RAA Board, consisting of the Lead Member from each of the four Councils, to ensure Cabinet members collectively discharge their responsibilities regarding outcomes for children in care. They will receive regular reports prepared via the RAA Strategic Commissioning Board on RAA performance.
27. An RAA Management Board will oversee the functioning and performance of the RAA at an operational level, ensure the full participation of a range of key stakeholders, and provide an interface between the RAA and the Strategic Commissioning Board.
28. Under regulation 5 of the Local Authority Adoption Service (England) Regulations 2003 each LA has to appoint an officer to manage the adoption service. Ultimately it is the LA that is responsible for the adoption service that it is required to maintain under s3 of the Adoption and Children Act 2002 and accountability and responsibility remains with the individual LA, hence inspection will be through the LA lens, and so the responsible officer needs to have sufficient oversight. In order to ensure that, each LA's Responsible Officer will sit on the RAA Management Board.

Evaluation of alternative options

29. Alternatives to moving to a RAA hosted by City of Wolverhampton Council:
 - a) To continue with the current arrangements: this would not provide the opportunity to realise the benefits that have been identified; it would also mean that the four Councils would not be working to Government policy.
 - b) To move to an RAA hosted by one of the other partner LAs: only Dudley MBC expressed an interest in hosting and the due diligence process found greater confidence in Wolverhampton's submission.

- c) To continue to develop a RAA as an LATC: this was seen as more costly and carrying greater risk, and is an option that has not found favour anywhere in the country.

Reasons for decision(s)

30. The recommendation to move to an RAA hosted by City of Wolverhampton Council has been proposed for the reasons above; chiefly that it will enable the benefits identified to be realised, and the Council to keep in line with Government policy.

Environmental implications

31. The proposals are intended to provide sustainable long term solutions and environmental considerations will be factored into service delivery changes. There are no explicit environmental implications arising from this report.

Corporate Landlord implications

32. The RAA Hub will be at Priory Green, Pendeford, owned by City of Wolverhampton Council, with a contribution to the lease and running costs made through the agreed support services element of the RAA budget.
33. This will have full time desk space for approximately 20 Hub based staff, plus some further space for practitioners to use on a "hot desk" basis. RAA staff will also have flexible access to existing office accommodation within the four LAs to enable locality working, which will be provided by each LA at no cost to the RAA.

Finance

34. The costs of setting up the RAA are being funded by the Department for Education (DfE) as part of the support available to early adopters of the programme in the form of a ring-fenced grant. The total grant allocation for the period December 2015 to the project go-live date is £1.1 million. This grant will also be used to fund one-off implementation costs associated with setting up the RAA. Wolverhampton CC are managing this grant on behalf of the partners.
35. The total budget for the RAA will be £4.757m. The RAA will be funded from income of £4.092m being provided by funding contributions from the LAs/Trust, and £0.665m supplemented by other income streams.
36. The Council's approved budget for the services that will transfer into the RAA is £1.078m. In addition to this, a recurrent sum of £0.050m is to be provided by each Council as a contribution towards support services costs. It has been agreed by partners that year two contributions will be calculated via a formula, which will be based on the number of placements and assume an inflationary uplift.
37. Funding of the RAA will be apportioned between the Councils based on the agreed funding formula from year two. The projected number of placements required by each LA/Trust has been agreed as the basis for the funding formula, and are included within the table below.

38. There will be provision within the RAA for the spot purchase of additional placements if requirements exceed the number of placements agreed. However, additional funding would need to be identified to pay for this.

39. The table below shows each Council's contribution for year one and the number of placements.

40.

	Year 1	Number of Placements
	£ m	
Dudley	1.128	40
Sandwell	0.876	31
Walsall	0.985	35
Wolverhampton	1.103	40
	4.092	146

41. There are some risks of overspending for the RAA in respect of spend on inter-agency fees, particularly in the first year whilst the RAA is embedding a range of practice improvements to enable more of the RAA's own approved adopters to be matched with children in need of an adoptive placement. The RAA will make every effort to prevent this and the situation will be closely monitored by the RAA Strategic Commissioning Board. The Collaboration Agreement between the parties will set out an agreed process between the LAs about how this will be reported by the RAA to funding partners, and addressed.

42. As a balance to this, some efficiencies are anticipated in the medium to long term in the area of inter-agency fee spend as well as through reduced looked after children placement costs as children are placed for adoption more quickly.

43. The Collaboration Agreement and the Funding Protocol will also specify to what extent the RAA will be able to accumulate reserves from its activities and the effect this has on the financial contributions of each LA, whether this will result in a reduction of the contributions, or whether the profit will be re-invested in the RAA.

Law

Legal requirement to provide an adoption service

44. The provision of an adoption service is a statutory requirement and the Council is required to monitor the provision of adoption services. The Adoption and Children Act 2002 provides the structure for this and under section 3 of the Act, each Council must continue to maintain within its area an adoption service designed to meet the needs of children who may be adopted, their parents, natural parents and former guardians. These services are referred to as the 'adoption service', meaning either a local authority or a registered adoption society may be referred to as an adoption agency (section 2(1) of the Adoption and Children Act 2002).

45. The development of an RAA will not absolve each local authority of its statutory responsibilities, but will allow for the delivery of certain functions to be contracted out which will facilitate the operation of an RAA.
46. Section 15 of the Education and Adoption Act 2016 enables the development of Regional Adoption Agencies by amending the Adoption and Children Act 2002 to include joint arrangements by one or more local authorities for all or any of their functions to be carried out on their behalf by either a) one of those authorities; or b) one or more other adoption agencies.
47. Each local authority will continue to be registered as an adoption agency as it will retain the Agency Decision Maker (ADM) responsibility for the child along with its care planning responsibilities. ADM for adopter approval will sit with the RAA. Under regulation 5 of the Local Authority Adoption Service (England) Regulations 2003 each LA has to appoint an officer to manage the adoption service. Ultimately it is the LA that is responsible for the adoption service that it is required to maintain under s3 of the Adoption and Children Act 2002 and accountability and responsibility remains with the individual LA, hence inspection will be through the LA lens as part of LA inspections and the responsible officer will continue to need sufficient oversight.

Transfer agreement considerations

48. Due diligence in relation to transferring employees will be undertaken, to ensure that all parties are fully aware of the liabilities City of Wolverhampton Council is taking on. Due consideration must be given to the number of employees on long term sick leave or likely to be involved in industrial unrest in one authority, to ensure further provision does not have to be made by other authorities.
49. Wolverhampton will require an indemnity against any pre-existing employment claims that would otherwise transfer (by operation of law) and liabilities of the transferring LAs/Trust. Mechanisms will be set out in the Collaboration Agreement as required to properly allocate liabilities, along with the arrangements for the sharing of risk between the Councils and the Trust. In particular this will address the residual liability of the Councils to underwrite any liabilities, cost, or losses which are generated by the operation of the RAA by Wolverhampton if the RAA does not have the means to pay these itself from its income or capital or the DfE's set up costs, or via Wolverhampton's insurance cover. The risk sharing arrangements would also apply if the RAA ceases to operate.
50. Each Council shall bear a financial risk in relation to any such residual costs, losses and liabilities which mirrors the proportion of their annual funding contribution to the RAA under the Funding Protocol (but excluding any costs and liabilities covered by the reciprocal indemnity which is to given by Wolverhampton).
51. Each of the 4 LAs will retain any liabilities which are associated with or arise out of their respective adoption services except in circumstances where the RAA is directly responsible for an act of negligence or breach of statutory duty limited to its own functions, and not extending to any liabilities of others or their vicarious liability. This includes liabilities and claims that relate to historical adoption cases.

Equality Impact

52. This proposal has equal opportunity implications as the development of an RAA has direct implications for looked after children with a plan for adoption. Actions included in this report target support for the most vulnerable children and therefore will have a positive impact on equalities. Research and data analysis has been undertaken to identify and agree actions to address potential equality impacts for service users and staff, and the project will continue to explore and address equality impacts. The data analysis includes results by protected characteristics to ensure that the actions outlined in this report are targeted to those areas that require it the most. The Equalities Assessment, undertaken by City of Wolverhampton Council, is available as a separate document.

Human Resources/Transformation

53. The operating model was developed in collaboration with current employees and stakeholders during the design phase. There will be one property acting as a 'hub' which will provide a base for some core staff and hot desking for others, supplemented by remote and home working and flexible access to office accommodation in the four councils/Trust to keep staff and service user travel time to a minimum. The aim is to develop a shared culture across the workforce of the new agency, whilst maintaining a local presence and enabling services to be delivered consistently across the region. Different working arrangements for staff will be required to achieve this.
54. Appropriate employees of the local authorities will transfer to City of Wolverhampton Council, under the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 ("TUPE"), thereby negating the possibility of any staff redundancies as a direct result of the transfer.
55. The TUPE timeline will ensure that all partners carry out their responsibilities regarding human resources and legal requirements in a time efficient manner. This will include exchange of information on the impact of the transfer on the affected staff, and any measures being proposed by the new agency. A formal consultation process with all affected staff and recognised Trade Unions and representatives will be led by the partner employers and supported by the RAA for all staff affected by the transfer.
56. Staff will transfer onto Wolverhampton's terms and conditions subject to a formal consultation with staff so that they can make an informed decision about whether or not to accept this change.
57. Appropriate 'pension protection' will need to be provided for employees who will transfer under TUPE from the local authorities to CWC as host of the RAA. Each LA will honour its own commitments regarding pension liabilities.
58. Appropriate 'pension protection' will need to be provided for employees who will transfer under TUPE from the local authorities to City of Wolverhampton Council as host of the RAA. Discussions will take place with the WMPF, through which all four LAs are members of the Local Government Pension Scheme ("LGPS"), to

ensure the transferring employees continue with their membership or entitlement to join following the transfer.

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List of Background Papers

Cabinet Report – 19th July 2017 – Creation of a Regional Adoption Agency – Adoption@Heart

Appendices

Appendix 1: Services to be delivered by the Regional Adoption Agency.