

**REPORT OF THE CHAIRMAN OF THE CHILDREN AND YOUNG PEOPLE'S  
COMMITTEE****BUSINESS CASE FOR THE ESTABLISHMENT OF A REGIONAL ADOPTION  
AGENCY FOR DERBY, DERBYSHIRE, NOTTINGHAM AND  
NOTTINGHAMSHIRE COUNCILS (D2N2)****Purpose of the Report**

1. To set out and seek approval of the business case to establish a Regional Adoption Agency (RAA) for the D2N2 local authorities.
2. Subject to the S151 Officer ( or his nominee) and the Monitoring Officer being satisfied with the final due diligence report, to seek approval for the establishment of the D2N2 Regional Adoption Agency, hosted by Nottinghamshire County Council on behalf of the D2N2 partnership in line with the terms set out in the business case.
3. To delegate authority to the Corporate Director for Children and Families to negotiate and finalise details of the terms of any legal agreements to give effect to these proposals, in consultation with the S151 Officer (or his nominee), and the Monitoring Officer.
4. To seek approval for the Council to enter into any legal documentation that is necessary to give effect to these proposals, such terms to be in a form that is approved by the Group Manager for Legal, Democratic and Complaints or her nominee.
5. To inform Committee that a further report will be taken to the relevant Committee seeking approval to establish new posts in the Regional Adoption Agency structure and to provide clarity on progress towards the Data Protection Impact Assessment.

**Information**

6. The Government legislated to regionalise adoption services in the 2016 Education and Adoption Act, stating its intention that all individual local authority adoption agencies be combined into regional adoption agencies 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.
7. To date eleven regional adoption agencies have been established in England which provide services to more than 30 local authorities. The majority of local authorities in

England are engaged with the funded programme for regionalising adoption. In the East Midlands, this has been through the East Midlands Regional Adoption Agency (EMRAA) working group comprising Lincolnshire, Leicestershire (also provides adoption services for Rutland), Leicester, Derbyshire, Derby, Nottinghamshire and Nottingham. Local adoption agencies such as Coram East Midlands and Faith in Families are also key partners in the EMRAA working group.

8. Regional adoption services are being developed in the context of aforementioned government policy through the establishment of regional adoption agencies as set out in the Education and Adoption Act (2016). The EMRAA project has been granted up to £900,000 by the Department for Education to cover the implementation costs of:
  - the establishment of a regional adoption agency for Derby, Derbyshire, Nottingham and Nottinghamshire (D2N2) by March 2019.
  - the establishment of a regional adoption arrangement for Lincolnshire, Leicester, Leicestershire and Rutland (L3R) during the period June 2018 to March 2019.
9. D2N2 funding is provisional upon delivery of the D2N2 RAA by the date stated above.
10. The four D2N2 local authority partners have agreed to pursue the development of a formal 'regional adoption agency'. The DfE has set out five requirements of such an arrangement, namely:
  - a single line of accountability in the region, and a head of service that manages the RAA
  - staff transfer of some description, so they operationally report to the RAA head of service
  - core adoption functions of the local authority being the responsibility of the RAA (adopter recruitment, family finding and matching activity, adoption support)
  - some form of pooled budget type arrangements from the local authorities into the RAA
  - matching activity that takes place across the region, with a single pool of children and adopters.
11. Nottinghamshire Children and Young People's Committee considered a report on 23 April 2018 and:
  - approved, in principle, the development of a business case for the establishment of a D2N2 Regional Adoption Agency and for a further report to be taken to Policy Committee for a decision once the final costs of a D2N2 Regional Adoption Agency are fully understood.
  - agreed, in principle, that the D2N2 Regional Adoption Agency may be hosted by Nottinghamshire County Council.
12. A business case has been developed by the EMRAA lead which demonstrates that a D2N2 Regional Adoption Agency will meet both the EMRAA vision and DfE funding requirements by delivering:

- more timely matching of children with adoptive families that meet their needs via improved practice and a wider pool of adopters recruited by the RAA. The resultant reduction in delay maximises life chances for adopted young people
- a wider choice of adopters in the D2N2 area for children who may be harder to place alongside greater opportunities for targeted recruitment of adopters
- a greater proportion of D2N2 children placed with D2N2 adopters and those from partner Voluntary Adoption Agencies (VAAs) in the region
- longer term consistent post-adoption support in the locality since fewer children will be placed away from the region
- economies of scale, particularly in relation to adoption panel, marketing and adopter preparation costs (for example, the RAA is projected to deliver a net reduction of up to 16 scheduled panels per year)
- continued reduction in the pressure on looked after children budgets by building upon best-practice (for example, Nottinghamshire avoided £1.2m in looked after children costs by reducing the time taken to adopt 40 children in 2016-17)
- improved opportunities for partner VAAs to provide placements which meet the needs of D2N2 harder to place children.

13. D2N2 RAA will, as a minimum, provide the following adoption services:

- tracking of children for whom adoption may be the plan for permanence
- recruitment of adopters to meet the needs of D2N2 children for whom adoption is the plan for permanence
- panels for approving adopters
- adoption support.

14. Services which are within scope of the RAA have been identified as well as those which remain the responsibility of individual local authorities (including statutory responsibility for their own children, and the provision of adequate equipment, premises, utilities, services, building management and ICT support in "spoke" locations) or those which will be commissioned from external providers. These will be detailed in the Inter-Authority Agreement.

## **Hosting the RAA**

15. D2N2 local authorities have approved in principle that Nottinghamshire County Council (NCC) is the preferred host of the D2N2 RAA. The authority has undertaken significant work in order to be ready to receive staff and establish operational arrangements. An interim head of service for D2N2 RAA is in post.

16. NCC's responsibilities as host partner of the RAA are as follows:

- providing leadership for all adoption services across the RAA
- recruitment, assessment and training of adopters

- post adoption support for all children within the designated boundaries
  - oversight of Adoption Support Fund applications
  - family finding
  - adoption support for any child that moves out of the RAA area, for a period of three years
  - quality assurance framework for the functions of the RAA
  - responsibility for the adoption service aspect of a Local Authority Ofsted<sup>1</sup> inspection framework, in so far as NCC holds information that is relevant to another local authority.
  - administrative support for the Adoption Panel
  - commissioning of specialist adoption support
  - access to birth records
  - providing corporate support functions such as HR, Finance, Payroll and BMS, ICT, Business Support and Customer Service etc<sup>2</sup>
  - management of the EMRAA website.
17. The development and operation of the RAA will not absolve each local authority of its statutory responsibilities but will allow for certain functions to be delegated to NCC as the host authority. NCC will then become responsible for the performance of those functions, on behalf of the partner local authorities, subject to the governance arrangements set out later in this report. The detail of the delegation of functions is currently being prepared by the Council's lead legal advisors, Bevan Brittan.
18. By becoming the 'host' the Council will become responsible for the delegated services, identified in **paragraph 16**. Each partner will however still retain statutory responsibility for their own children<sup>3</sup>.
19. The S151 Officer<sup>4</sup> has agreed a charge of 7.5% of the total RAA budget to the RAA for the provision of all central support services (such as those listed in **paragraph 16**).

## Benefits

20. A larger pool of adopters improves the likelihood of placing Nottinghamshire children with an adoptive family which meets their needs, in a timely way.
21. A larger pool of adopters increases the chances of finding an adoptive placement within the RAA pool, reducing the need to place Nottinghamshire children with external agencies.

<sup>1</sup> The [Ofsted ILACS Framework](#) states that Ofsted does not have powers to inspect the RAA as a single entity. The individual Authorities will retain responsibility for complying with their statutory responsibilities, and the RAA will support this by providing the relevant information.

<sup>2</sup> The full list of support services will be detailed in the legal agreements

<sup>3</sup> Children for whom adoption is the permanence plan

<sup>4</sup> An officer appointed under section 151 of the Local Government Act 1972 which requires every local authority to appoint a suitably qualified officer responsible for the proper administration of its affairs.

22. As host authority for the D2N2 Regional Adoption Agency, Nottinghamshire will be highly influential in developing a centre of excellence and best practice for adoption services for the future with the potential to influence national policy.

### **Dis-benefits/ Risks**

23. There are potential risks associated with the transfer of a significant number of staff including pensions and redundancy costs. This risk is not believed to be significant, as no redundancies are planned<sup>5</sup> and pensions transfers are to be fully-funded.
24. There is a risk that the hosting arrangement will cost more than the 7.5% allocation which has been agreed. This risk will be mitigated by an annual review of the hosting charge by the S151 Officer. The RAA budget has made allowance for this and will need to account for any future increases as part of its annual budget-setting process.
25. A key risk is that the partnering authorities do not fulfil the services that NCC will depend upon, such as the provision of adequate equipment (such as essential stationery), and the provision of premises, utilities, services, building management and ICT support in "spoke" locations. In order to mitigate this, terms for provision of these services will be made in the legal agreements between the parties.
26. The complexity of work required to prepare for implementation may result in additional cost to NCC as the host authority. The implementation budget is being closely monitored to ensure that costs are contained. However, there is a possibility that external legal costs may exceed the original cost estimate provided. In the event that this arises it will be met from the Children's & Families budget.
27. The lead times for drawing up and negotiating the inter-authority agreement are challenging. Early work has been completed to identify key information. The draft inter-authority agreement has now been prepared by the external legal advisors, and is under consideration by each partner.
28. There is a risk that the Partnership Board will, on occasion, be unable to arrive at a consensus conclusion. In this eventuality the dispute resolution process (which will be detailed in the inter-authority agreement) will be deployed (see **paragraph 45**).

### **Due Diligence**

29. The Council is undertaking a due diligence exercise in respect of the services transferring into the RAA from each of the partner local authorities. This is to identify any risks associated with these proposals including any issues arising from the work underway regarding the Data Protection Impact Assessment (DPIA) referred to in **paragraphs 57 and 60** of this report below. Further detailed work is ongoing and therefore it is proposed that a report will be prepared for the consideration and approval of the S151 Officer (or his nominee) and the Monitoring Officer, regarding the mitigation of any risks and issues that are identified, to ensure that they are satisfied that any issues are addressed before completion of any legal agreements takes place.

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<sup>5</sup> Vacancies in the Youth, Families & Social Work department would provide redeployment opportunities if staff numbers in the RAA were to be reduced

## Staffing the regional adoption agency

30. Following advice of HR leads for the partner local authorities, staff will be transferred by TUPE to Nottinghamshire County Council as host and lead partner of the D2N2 RAA.
31. The Council is working with the partner organisations to agree the TUPE transfer. The S151 Officer has considered it will not have any significant effect on pensions liabilities, as the inter-authority agreement will provide for any transfer of pensions benefits to be fully-funded. The management of future pensions costs will also be detailed in the inter-authority agreement.
32. Legal advice has confirmed that TUPE is appropriate for the shared local authority service model.
33. The proposed staffing model for the RAA is set out in the table below.

RAA staffing model	
ROLE	NUMBER OF EMPLOYEES
Head of Service	1 fte
Service Managers	2 fte
Team Managers	7 fte
Social Workers	38 fte
Agency Advisors	2 fte
Social Work Support Officers	10 fte
Marketing and Recruitment Officer	1 fte
Business Manager	1 fte
Clerical Assistants	7.5 fte
Panel Minutes Co-ordinators	4 fte
<b>TOTAL:</b>	<b>73.5 fte</b>

34. The total full-time equivalent staff in scope for transfer is 79.4 fte (excluding current vacancies) compared with the proposed staff structure of 73.5 fte. It is expected that, following consultation, some staff from partner authorities may drop out of scope and that some may request changes to their current hours.
35. Once the final staffing structure has been confirmed a report will be brought to the relevant Committee to seek approval to establish the new posts.
36. At most, an additional 5.9 fte staff over the preferred establishment are in scope to transfer into the RAA, at an estimated cost of £392,904<sup>6</sup>. A contingency of £400,000 has been included in the RAA budget to cover these costs and other costs arising from

<sup>6</sup> The estimate is based on top-of-scale and will not increase, although it is possible that it could reduce

differences in pay across the partner local authorities. This contingency budget will diminish in subsequent years as staff numbers reduce down to the proposed staffing structure for the RAA.

37. Nottinghamshire has identified 30.6 fte adoption staff to work in the RAA, but will retain sufficient staff and skills to conduct its retained statutory responsibilities for children and permanence planning.
38. Staff from partner local authorities will remain based in their current premises, but all RAA staff will be able to work from any local authority premises within D2N2.
39. Activity associated with occupation of local premises<sup>7</sup> within partner local authorities is to be provided at no cost to the RAA.<sup>8</sup>
40. There has been ongoing engagement with staff, service users and other stakeholders in the design of the service. Preliminary discussions have also taken place with the Trades Unions. Formal TUPE consultation with staff and unions across the partner local authorities will be subject to Policy Committee's approval of this report, and the individual local authority governance structures.

### **Partnership, governance and funding arrangements**

41. An inter-authority agreement will record the nature of the partnership and the principles of joint working that will be adopted by the authorities. It is proposed that the agreement will be for a five year term with a break clause after three years, and then a rolling term (an 'evergreen' provision). There will be a review of the agreement and the operation of the agency after one year, and an update will be presented to the Children's and Young People's Committee.
42. A Partnership Board will provide a forum for Board Members to discuss matters; however, the authority for making decisions will remain in accordance with each of the individual partner local authorities' own internal governance arrangements. The inter-authority agreement will set out the expectation that the conclusions of the partnership board will be by consensus. The governance structure of the RAA is attached as **Appendix 1**.
43. The agreement will document:
  - the commitment by Nottinghamshire County Council to provide the adoption services on behalf of the RAA to an agreed specification.
  - the commitment by all partners to provide the child care and permanence work to an agreed specification to support the work of the RAA.
  - the commitment by all partners to provide adequate equipment, premises, utilities, services, building management and ICT support in "spoke" locations

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<sup>7</sup> Activity to be detailed in the IAA

<sup>8</sup> Breakdown of responsibility with regards to ICT and legal advice will be set out comprehensively in the inter-authority agreement

44. The inter-authority agreement will set out the expectation that decisions of the partnership board will be by consensus.
45. 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.
46. The inter-authority agreement will also detail arrangements to dissolve or amend the partnership if the need arises, by providing not less than six months', and up to 12 months' notice<sup>9</sup>.
47. It is proposed that the Corporate Director of Children for Families, in consultation with the S151 Officer (or his nominee) and the Monitoring Officer, and having the necessary delegated approval, will approve detailed terms<sup>10</sup> of the inter-authority agreement and any ancillary-related agreements associated with these proposals.
48. A performance and quality assurance group will meet quarterly to scrutinise and quality assure the provision of adoption services and will report to the partnership board. Direct operational delivery will be undertaken by Nottinghamshire County Council. Nottinghamshire will report and provide performance data to the Board and to the performance and quality assurance group.
49. The four local authorities will jointly fund the RAA. The budget for years 1-3 will be based on pooled budgets, with the intention of moving to a unit-cost based budget in year 4.
50. The indicative budget for year 1 (2019-2020) is £5,324,917, with the contributions from each authority as follows:

Derby City Council	£1,008,647	(18.94%)
Derbyshire County Council	£1,288,517	(24.2%)
Nottingham City Council	£1,169,568	(21.96%)
Nottinghamshire County Council	£1,858,186	(34.9%)
51. Future budgets will be proposed by the partnership board for consideration by the partner local authorities. The approach to dispute resolution will be described in the Inter-Authority Agreement.
52. If the RAA does overspend, or requires additional funding in the future, the cost will be shared proportionally between all four partner authorities, based upon the proportion of the overall budget.

### Other Options Considered

53. The following options were considered in order to establish the D2N2 Regional Adoption Agency:
  - a) **Local authority shared service hosted by Nottinghamshire County Council (agreed model)**

<sup>9</sup> The amount of notice has yet to be agreed, and will be included in the Inter Authority Agreement

<sup>10</sup> Such terms to be in a form that is approved by the Group Manager for Legal, Democratic and Complaint.



**b) Joint venture between the partner local authorities to form a Local Authority Trading Company (LATC)**

This model would involve more than one local authority coming together to set up a legal entity to act as the RAA. The entity would be entirely owned and controlled by the local authorities collectively.

**c) Joint venture with regional Voluntary Adoption Agencies (VAAs)**

This approach would widen the group of local authorities coming together to set up the legal entity to include one or more VAAs. The entity would be owned and controlled collectively by this wider group.

54. Following consultation with lead members and Directors of Children's Services and an options appraisal of the possible legal forms, the EMRAA Project Governance Board recommended that the D2N2 RAA should be delivered as a shared service between the participating local authorities. It was felt that a joint venture with VAAs would not be sufficiently binding to provide D2N2 partners with adequate assurances. A local authority trading company was estimated to incur additional costs to the partner authorities as it would not be feasible to utilise current resources.
55. The proposed development of the D2N2 Regional Adoption Agency meets the Department of Education (DfE) requirements of a regional adoption agency. 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

## **Statutory and Policy Implications**

56. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

## **Data Protection and Information Governance**

57. A Data Protection Impact Assessment (DPIA) is in development to ensure that General Data Protection Regulation implications have been fully considered throughout the

process of establishing the Regional Adoption Agency, and where appropriate actions have been taken to mitigate identified risks.

- 58. The Data Protection Act 2018 requires organisations to complete a DPIA to ensure that any high risks to people's rights and freedoms arising from the processing (i.e. the collection, storing, accessing, sharing, transferring, destruction etc data) of their data are minimised.
- 59. Failure to complete a DPIA at all or properly can carry a fine of up to £8.5m. Where data processing risks are considered to present a high risk which cannot be effectively mitigated as part of the DPIA process, the Information Commissioner's Office (ICO) must be consulted and agree to the proposals before the data processing can commence.
- 60. A DPIA for the RAA is in development and has been used to design the approach to data processing and mitigate data protection risks identified thus far. The DPIA will be completed when full and specific detail of the way in which the RAA will process data is known. At that point, the risks of the proposed data processing will need to be fully considered and, if necessary, referred to the ICO.

### **Financial Implications**

- 61. A key aim of the D2N2 RAA is that it will be delivered at no additional cost to local authority partners or Nottinghamshire as the host.
- 62. Significant work has been undertaken by the D2N2 authorities to identify and agree the budget in scope for the RAA service delivery. The budget identified to date is detailed in **paragraph 50**.
- 63. The RAA will need to manage within the agreed funding envelope. The Head of Service and D2N2 partnership board will closely scrutinise operating costs and any increase in funding will require the agreement of this board before consideration via individual local authority governance arrangements as part of the annual budget setting process.
- 64. The inter authority agreement will detail the financial arrangements between the partners including the risk sharing for any overspends that may arise, potential redundancy costs and pension strain costs and partner payment arrangements.
- 65. If the RAA does overspend, or requires additional funding in the future, the cost will be shared between all four partner authorities and Nottinghamshire's share will have to be met from the Children and Families departmental budget.
- 66. The S151 Officer will review the host charge annually to ensure that Nottinghamshire is appropriately funded for the provision of central support services to the RAA.
- 67. Initial set up costs are expected to be met from the DfE development grant funding currently managed by Lincolnshire County Council. However, there is a possibility that external legal costs may exceed the original cost estimate provided. In the event that this arises it will be met from the Children's & Families budget.

### **Human Resources Implications**

68. Approximately 79.5 full-time equivalent staff from across the four local authorities are in scope to deliver the functions of the RAA, (excluding current vacancies and temporary posts), of which 30.6 are Nottinghamshire County Council staff. Staff from the other authorities will be transferred to Nottinghamshire County Council as the RAA host authority under TUPE legislation.

### **Procurement Implications**

69. The arrangements do not require competitive procurement under the Public Contracts Regulations 2015 as they are being structured as administrative arrangements between public bodies rather than contracts for services.

### **Public Sector Equality Duty Implications<sup>11</sup>**

70. A key priority of the D2N2 Regional Adoption Agency will be to ensure the most appropriate match 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.

### **Safeguarding of Children and Adults at Risk Implications**

71. Nottinghamshire may host the RAA on behalf of the other D2N2 councils and all safeguarding responsibilities for Nottinghamshire children will remain the responsibility of Nottinghamshire County Council.

### **Implications for Service Users**

72. Regionalisation should improve outcomes for children, adopters and adoptive families

## **RECOMMENDATION/S**

That:

- 1) The establishment of a Regional Adoption Agency for D2N2 be approved subject to the provisions below:
- 2) subject to the S151 Officer (or his nominee) and the Monitoring Officer being satisfied with the final due diligence report the D2N2 Regional Adoption Agency be hosted by Nottinghamshire County Council on behalf of the D2N2 partnership in line with the terms set out in the business case.
- 3) delegated authority be granted to the Corporate Director for Children and Families in consultation with the S151 Officer (or his nominee) and the Monitoring Officer to negotiate and finalise details of the terms<sup>12</sup> of the inter-authority agreement and any ancillary-related agreements associated with these proposals.

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<sup>11</sup> EqIA appended

<sup>12</sup> Such terms to be in a form approved by the Group Manager for Legal, Democratic and Complaint.

- 4) the Council enters into any legal documentation that is necessary to give effect to these proposals, and that such terms be in a form that is approved by the Group Manager for Legal, Democratic and Complaints or her nominee.
- 5) a further report be brought to the relevant Committee seeking approval to establish new posts in the Regional Adoption Agency structure and to provide clarity on progress towards the Data Protection Impact Assessment.

**Councillor Philip Owen**  
**Chairman of the Children and Young People's Committee**

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#### **Constitutional Comments (SSR 22/10/18)**

73. The recommendations set out in this report fall within the scope of decisions which may be approved by Policy Committee.

#### **Financial Comments (SS 21/09/18)**

74. The financial implications of the report are contained within paragraphs 61 - 67 above.

#### **HR Comments (BC 17/09/18)**

75. The staffing implications are contained with the body of the report. Formal consultation with staff and the Trade Unions will commence on approval of the Business Case.

#### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Regional Adoption Agency (D2N2 RAA) Business Case  
Equality Impact Assessment  
Establishment of the D2N2 Regional Adoption Agency – report to Children and Young People's Committee on 23 April 2018

#### **Electoral Division(s) and Member(s) Affected**

All.

C1158