

**PROPOSAL TO TUPE STAFF FROM PARTNER AGENCIES TO STOCKPORT  
AS HOST OF ADOPTION COUNTS REGIONAL ADOPTION AGENCY**

Report of the Director of Children's Services

**1. INTRODUCTION AND PURPOSE OF REPORT**

This briefing paper outlines the business case for the proposal to TUPE staff currently employed across the 4 partner local authorities to Stockport. The paper covers:

- the background;
- an over view of the existing service;
- current employee arrangements;
- an over view of funding;
- the proposal including legal, financial and staffing implications;
- action requested.

**2. BACKGROUND**

2.1 In May 2015, the government announced changes to the national landscape of Adoption, by proposing that all adoption services would need to be delivered on a regional basis by 2020. The premise for this was to:

- Increase the number of children adopted;
- Reduce the length of time children wait to be adopted;
- Improve post adoption support services to families who have adopted;
- Reduce the number of adoption agencies, thereby improving efficiency and effectiveness.

These proposals have since been included in the Education and Adoption Act 2016.

2.2 In July 2015, local authorities were asked to bid for funding to become pilot Regional Adoption Agencies (RAAs). It was also confirmed that if a local authority did not have plans in place to join an RAA by 2017, then it could be placed in a partnership selected for it. Subsequently 22 of the 23 North West local authorities submitted regional bids for funding. A major consideration at the time was that each RAA should have a minimum of 200 children a year adopted and services should be integrated, rather than merely collaborative arrangements, such as those provided by many of the existing adoption consortia.

2.3 For a number of years Stockport, Cheshire East, Tameside and Trafford had worked together as part of 'Four 4 Adoption'. This award-winning partnership of four local authorities had worked together to make the adoption process as seamless and effective as possible for children waiting for adoption.

- 2.4 Given the success of 'Four 4 Adoption', Stockport looked to build on this work to form an effective RAA bid. Tameside, however, took the early decision to join the West Pennine partnership. The remaining three authorities subsequently developed a strong bid with the addition of Manchester and Salford, thus ensuring the requisite number of prospective children and adopters to meet bid requirements.
- 2.5 The Department for Education (DfE) made it clear that they wished to see Voluntary Adoption Agencies (VAAs) as integral partners in the regional agencies. Adoption Matters and Caritas Care were invited to join the partnership. It was anticipated that the new agency would work closely with voluntary sector partners to identify possible adopters, particularly for 'hard to place' children and in the delivery of more specialist services (such as Concurrent Planning and Birth Parent Support) which needed to be openly procured. VAAs retained their independent status and identity.
- 2.6 This bid was accepted by the DfE and given the status of 'define and deliver'.
- 2.7 As required, a Transition Plan was submitted to the DfE in April 2016 together with a funding plan and detailed programme. The DfE responded at the beginning of June 2016 with the request that the new agency be one of five 'demonstrator' projects to provide a national lead to the RAA programme.
- 2.8 As a result of the initial bid, the RAA was awarded £171,000 in funding to support the implementation process. A further £449,000 was subsequently awarded for the period of 1<sup>st</sup> November 2016 to 1<sup>st</sup> April 2017. The successful bid also allowed the participating agencies to influence how RAAs develop nationally.
- 2.9 A Project Board was established in December 2015 to oversee the project plan and work streams. The Board operated at an appropriately senior level and included the Directors and/or Assistant Directors of the 5 local authorities, chaired by Stockport's Director of Children's Services with representatives from SMBC Finance, the Voluntary Sector and an adopter representative in attendance.
- 2.10 A Transition Plan set out how the five partner local authorities would work together to set up the new RAA by July 2017. The agency, called Adoption Counts, was 'hosted' by Stockport MBC on behalf of the other participating authorities. The risks to Stockport in assuming this role were assessed and mitigation measures identified. They were regularly monitored and reviewed by the Management Board.
- 2.11 The objectives of Adoption Counts were (and remain):
- a) To provide children with the right adopters at the right time, approving those equipped to meet the needs of children waiting;
  - b) To minimise changes of plan away from adoption;
  - c) To reduce delay and improve timescales for matching and placement for all children, working with care planning processes in each LA to improve

early identification / twin track planning and to achieve best practice and consistency across the region;

- d) To improve earlier permanency planning using Concurrent Planning and Fostering for Adoption;

To take innovative approaches to placing 'hard to place' children and to linking children with adopters from enquiry stage onwards where appropriate;

- e) To thoroughly prepare children and families for placement;

- f) To reduce the likelihood of placement breakdown through timely and improved matching, preparation and adoption support;

- g) To form strong and productive partnerships with:

- i. Adopters
- ii. Adoptees
- iii. Voluntary Sector providers

ensuring that customer feedback and the views of service users are obtained and considered in the development of the service

2.12 Office locations were identified in Salford, Wythenshawe and Middlewich.

2.13 An Integrated Service Agreement set out the legal framework for the operation of the new service and was agreed by all parties.

### **3. EXISTING SERVICE**

3.1 In July 2017, Adoption Counts launched and became responsible for the delivery of and management of all adoption specialist services cross the partnership.

3.2 The structure of Adoption Counts consists of:

A 'Hub' (based in Wythenshawe) providing:

- A centralised marketing function;
- A centralised team to receive recruitment enquiries;
- A central register of children and carers;
- A Data & Performance Management function;
- Centralised administration of Adoption Panels;
- Commissioning of larger contracts from other agencies;
- Centralised tracking of children and carers;
- Centralised Linking & Matching functions;
- A strategic plan for the delivery of Adoption Support across the region.

Three 'spoke' offices covering the North (based in Salford), Centre (Wythenshawe) and South (Middlewich) of the region:

- Delivering adopter preparation and approval;
- Identifying at an early stage the children being looked after by each participating authority who are likely to require adoption;

- Family finding for and matching children with appropriate families;
- Adoption Support services;

3.3 Services are managed by a regional manager who is employed and managed by Stockport but is accountable to the Board, which transformed from the project board to the management board at the point of the agency launching. The board meets quarterly.

Services are governed with reference to the **Integrated Services Agreement** which includes a **Service Specification** setting out the respective roles and responsibilities of the host agency and local authorities. The agreement also includes a finance schedule, which sets out the financial agreement between the partners.

3.4 Adoption Counts has performed well across all 5 local authorities, enhancing the recruitment of adopters, placing between 70 and 80 % of children with families approved by the agency. While the agency is not itself inspected by Ofsted, its delivery of services to each local authority is considered when their permanence services are scrutinised. Ofsted feedback about Adoption Counts has been wholly positive.

3.5 Staff are now well integrated, and Adoption Counts has a strong identity.

#### 4. CURRENT STAFFING ARRANGEMENTS

4.1 Staff were seconded from their employing agency into Stockport as the host agency. All staff remained on existing terms and conditions. This was an unusual secondment arrangement given that the roles and tasks undertaken by these staff were also seconded to the agency.

A decision to second rather than TUPE at that stage was based on:

- a historical experience of undertaking this form of secondment by Stockport;
- the unknowns about the future development, performance and longevity of the RAA;
- a reluctance by the host authority to accept the TUPE risks, given the above;
- concerns of staff who were already highly anxious about the impact of the RAA programme.

4.2 As posts became vacant, Stockport assumed the responsibility for recruiting and employing new staff.

4.3 Stockport currently employ 60% of all staff and this figure rises whenever a new appointment takes place. See table below:

Head Count	Head Count	Stockport	Other LA	WTE	Stockport	Other LA
Regional Adoption Manager (HOS)	1	1	0	1	1	
Operations Managers (Recruitment & Family Finding)	2	2	0	2	2	
Team Managers (Recruitment & Family Finding)	6	3	3	5.4	2.4	3
Recruitment & Assessment Workers	23	10	13	19.7	8.9	10.3
Recruitment & Enquiry / Marketing	3	2	1	2.6	1.6	1
Family Finding Workers	17	7	10	13.1	5.5	7.6
Panel Advisor	1	1	0	1	1	0
Adoption Support Development Manager	1	1	0	1	1	0
Team Managers (Adoption Support)	3	3	0	1.9	1.9	0
Adoption Support Workers	17	12	5	12.7	8.2	4.5
Family Support/ Letterbox Workers	5	4	1	3.1	2.6	0.5
School Advisor	1	0	1	0.5	0	0.5
Business Support	13	10	3	11.1	8.1	3
Total	93	56	37	75.1	44.2	30.4
Percentage		0.60	0.40		0.60	0.40

## 5.0 FUNDING ARRANGEMENTS

5.1 In year one and two of the agency, funding was based on the amount that each participating authority had spent on adoption services prior to integration.

The overall budget is set by the Board. For determining the split of local Authority contributions (to fund the budget requirement) in 2019/20 an activity based model replaced the previous historic budgets approach.

5.2 The budget lines are now each divided into three cost pools according to what service the staff (and non-staff budgets) support. An appropriate data driver has been identified to allocate the cost from each pool to the five Authorities. Contributions therefore reflect where the clients have arisen for each pool.

Pool	Driver
Adoption	3-year average SHOBPA by Authority
Adoption Support	Letterbox by Authority
Admin/back office	Mixture of the above drivers

- Inter-agency budgets are included within RAA;
- Staffing teams are included in the RAA budget;
- All surpluses / deficits distributed in proportion to contributions;

- 17/18 a surplus was held but in 18/19 this was used to reduce contributions;
- 19/20 forecast deficit due to inter-agency budgets to be funded by LA partners in-year.

5.3 In practical terms SMBC leads on managing the budget and the service provision on a day to day basis.

5.4 The table below shows budget contributions for 2019/20, based on activity. There are ongoing negotiations regarding contribution options for 2020/21.

<b>2019/20 contributions</b>	
Manchester	1,910,438
Cheshire East	885,208
Salford	804,493
Stockport	722,124
Trafford	471,353

## **6.0 THE PROPOSAL**

6.1 To transfer the currently seconded staff to SMBC through the application of TUPE regulations, underpinned by an amended Integrated Services Agreement. This arrangement would legally support the current arrangements. It is the view of Legal Services within Stockport that while the current secondment arrangement was a pragmatic and useful stance at the point of go-live, it does in essence reflect a TUPE arrangement. Legal advice is that TUPE operated by law in 2017 and as such is currently open to challenge by any seconded member of staff. Formalising the arrangement will affect 30.4 WTE post holders i.e. 40 % of RAA staff

### **6.2 Benefits**

- Minimal disruption to service as the service is currently hosted by Stockport
- Organisation responsible for the management of the service and the staff and deployment of the budget would be held in one place
- Legally compliant with employment legislation
- Mitigates risk to Stockport given it already employs the majority of staff

It is anticipated that the new service arrangements can be implemented with minimal disruption to ongoing service provision. The service is established and performing at a consistently high level. Governance and finance arrangements are in place and were found to be robust when audited by Stockport internal audit in 2018. This proposal makes no change to the funding agreement of the RAA.

## 7.0 ACTIONS

There are actions required in 3 key areas:

### 7.1 The agreement by all parties of the amended Integrated Service Agreement and amended finance schedule

This agreement sets out:

- Service specifications for provision of the services by the council;
- Finance arrangements;
- Governance arrangements;
- Any other commercial terms, e.g. in relation to shared future risk.

This is currently with the 4 partner Local authorities who are clear that TUPE consultations cannot commence until Stockport Council gives its agreement and until the amended Agreement has been accepted by all.

This amended version has been drawn up by Stockport Legal Services in consultation with the RAA manager, Stockport DCS and Lead Member for Children. The finance schedule has been amended to ensure that all costs incurred by the operation of the RAA are shared between the partners irrespective of the employing agency.

### 7.2 The review of schedules relating to the Integrated service agreement

- Information Governance to review the information sharing agreement in light of the proposal;
- Support services agreement to be reviewed;
- Schedule 6 to be updated with information on transferring employees that the other authorities are providing to SMBC – in anonymised form for the purposes of the agreement, once this has been agreed .

### 7.3 An 'in principle' agreement within Stockport to agree that consultation in the 4 partner LAs can begin once the above Agreement is signed by all parties.

To that end this paper is being presented to the Senior Management team within Children's services, the Corporate Leadership Team, Scrutiny and Cabinet. This follows a process of due diligence where meetings have taken place with key services including legal, human resources, audit, insurance and finance to ensure there are no hidden costs or risks to Stockport from this proposal. Any identified risks have been addressed by the amendments made to the Integrated Service Agreement and schedules.

## 8.0 THE IMPLEMENTATION OF TUPE ARRANGEMENTS

Full consultation is required with employees in the 4 partner local authorities

<b>Risks to be Managed:</b>
<p>Potential equal pay claims -TUPE is a statutory protection afforded to employees in terms of their terms and conditions following a transfer to another economic entity or a service provision change. Whilst it is not intended to do so it can have the temporary effect of guarding against or affording a defence against workers raising equal pay issues.</p> <p>Equal pay claims can be based on like work, work of equal value or work rated as equivalent (following a job evaluation exercise) but they are essentially founded on inequality between the genders. For this purpose, there must be actual or REAL (as opposed to hypothetical) comparators, i.e.: - workers of a different gender to the complainant undertaking the same work or work of equal value /rated equivalent. As there are staff coming in from other LAs on different salaries there could notionally be a situation where a male worker is doing exactly the same job as a female worker but is being paid more. This could rise to a potential equal pay claim. The RAA currently employs 1 male member of staff who is employed by Stockport.</p> <p>In these circumstances it would be a material factor defence to a claim for equal pay to make it clear that TUPE operated to protect salaries and other benefits.</p> <p>In relation to discrimination claims (where a hypothetical comparator is permitted i.e. claims based on work rated as equivalent, where much of it can be based on relevant statistical evidence within the relevant field, nationally, especially in the public sector, where should be no difference in pay geographically) there would also be a non-discriminatory reason for the pay inequality.</p> <p>It is the legal view in any effect that the risk has already been taken and TUPE operated by law in 2017.</p>

### 8.1 Draft Timeline

<b>Date</b>	<b>Action</b>	<b>Who</b>
20.02.2020	Proposal agreed by senior leadership team	RAA Manager
03.03.2020	Proposal agreed by corporate leadership team	RAA Manager
04.03.2020	Proposal agreed by Scrutiny	RAA Manager
17.03.2020	Proposal agreed by cabinet	RAA Manager
March	All parties agree to the amended Integrated Service Agreement and specifications	Cheshire East, Manchester, Salford & Trafford
April-June 2020	Consultation with Staff	Cheshire East, Manchester, Salford & Trafford
July 2020	Employees TUPE to SMBC	Current seconded staff

## **9.0 DECISIONS REQUESTED**

Approve the proposal in principal subject to all parties agreeing to the revised Integrated Services Agreement and schedules.

### **BACKGROUND PAPERS**

There are none

Anyone wishing to inspect the above background papers or requiring further information should contact Sue Westwood on 07800 618733 or by email on [sue.westwood@stockport.gov.uk](mailto:sue.westwood@stockport.gov.uk)