


<b>Cabinet</b>  30 January 2019	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Debbie Jones, Corporate Director, Children and Culture	<b>Classification:</b> Unrestricted
<b>Adopt London East - Regional Adoption Agency – Business Case</b>	

<b>Lead Member</b>	<b>Councillor Danny Hassell, Cabinet Member for Children, Schools and Young People</b>
<b>Originating Officer(s)</b>	Richard Baldwin, Divisional Director – Children’s Social Care
<b>Wards affected</b>	All Wards
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	30 October 2018
<b>Reason for Key Decision</b>	Impact on Wards
<b>Strategic Plan Priority / Outcome</b>	Children and young people are protected so they get the best start in life and can realise their potential

### Executive Summary

The purpose of the report is to propose a model for the future delivery of East London’s Regional Adoption Agency.

It is proposed that the East London Regional Adoption Agency (RAA) is created through combining the adoption services for the four East London Boroughs of Havering, Tower Hamlets, Newham and Barking and Dagenham. These agencies wish to build on the success of their existing services to improve performance in meeting the needs of children who require permanence through adoption, by bringing together the best practice from each authority within the RAA. This proposal forms part of an overarching project to develop four RAAs across London. Each of the four RAA’s will have a host/lead authority. Havering will be the lead authority for East London. All local authorities in England are statutorily required to join a regional adoption agency by April 2020

Following the recent news regarding Waltham Forest’s cabinet decision to join ‘Ambitious for Adoption’ an alternative Regional Adoption Agency, this report recommends a four local authority model.

In Tower Hamlets, the average annual spend for adoption services over the last three years (plus a projected spend 2017/18) was £284,566.00.

Under the proposed formation of an East London RAA a contribution of £327,251 is required to fund future costs within the RAA.

Inter-agency fees will remain the responsibility of each Local Authority and will not form part of the budget for the RAA – a budget will be retained to cover inter-agency fees within each constituent Local Authority including Havering.

Each member of the RAA will need to provide a one-off contribution to the set-up costs of the RAA – these are costs that are not currently covered by individual adoption budgets including the Head of Service for the RAA, and the centralised business support function. The Tower Hamlets contribution will be a one-off payment of £42,684, with the other three Local Authorities also making one-off contributions. As the host authority, Havering will receive an income of circa £200k in the first year to cover the cost of transition, a new head of service and hosting costs.

The business case to support this model enables each Local Authority partner to reduce the amount it spends on inter-agency fees, as the RAA recruits more of its own adopters, and places more of its children with its adopters. Alongside this reduction in expenditure, the model also projects an income that will be derived from other Local Authorities placing their children with East London Adopt carers, thus attracting a fee income to the RAA. This projected income will allow the transition costs to be tapered off to £0 in year 2 of the RAA going live. The combined effect of an inter-agency fee income (which will be retained by the East London Adopt RAA), and the reduction of inter-agency expenditure (the costs of which will be allocated proportionately, and budgetary responsibility retained by each of the constituent Local Authorities) enables the model to project a reduced overall cost of delivering adoption services over the next three years.

The design of the RAA will be led by a commitment to innovate and improve practice; as such there are a number of anticipated benefits:

- Increased placement choice from a wider pool of prospective adopters
- Swifter matching of adopters with children
- A wider range of support services for adoptive families via the Pan-London Commissioning Hub thus promoting stability and reducing disruption
- Smoother and timelier processes for placing children with families
- Reduced costs through timeliness and decreased use of inter-agency placements
- Improved life chances of vulnerable children

## Headline Risks

The table below sets out the key risks and mitigating actions associated with the formation of the East London RAA.

<b><u>Risk</u></b>	<b><u>Explanation</u></b>	<b><u>Mitigation(s) / Principle(s)</u></b>
Redundancy costs	There is a risk that all redundancy costs (post-implementation) fall to the host authority	<ul style="list-style-type: none"> <li>• The RAA partnerships agree that all future redundancy costs are split equitably among the constituent local authorities</li> <li>• Any redundancy costs (pre-implementation) remain with the originating local authority</li> </ul>
Current assets (adopters)	Each local authority will join an RAA with a pool of adopters recruited by that local authority. There is a risk that the income generated by those adopters becomes RAA income and is therefore being apportioned equally among the constituent local authorities	<ul style="list-style-type: none"> <li>• Any income generated through assets (adopters) brought into the model will be able to be drawn down by the local authority that recruited them</li> <li>• Beyond implementation (or the date that joint recruitment commences) all adopters will be considered RAA assets. The income generated from these adopters will remain with the RAA and discussed by the partnership as to how the money is best used / apportioned</li> </ul>
Paying Interagency fees	There is a risk that the RAA spend on interagency fees is apportioned equally across all local authorities. There could be a situation where a high % of the children come from a single borough but the costs are split equally.	<ul style="list-style-type: none"> <li>• The RAA's will operate a sliding scale formula for how interagency costs are apportioned.</li> <li>• It will take into account the originating borough of the child</li> <li>• It will also take into account the previous year's spend on interagency placements</li> <li>• The partnership agreements will work these formulae up in consultation with local project boards and the executive</li> </ul>
Unpredictable demand	Performance suggests that adoption demand is unpredictable. There is a risk that the current funding may not be enough if there is a spike in demand	<ul style="list-style-type: none"> <li>• The RAA will have tolerances for capacity across the region and for each local authority based on a target unit cost per child placed</li> <li>• The partnership agreements will agree the process for how extra funding can be drawn down to cope with rising demand</li> <li>• Should the RAA's meet their performance targets, the</li> </ul>

		<p>associated savings could be used as a buffer</p> <ul style="list-style-type: none"> <li>• Income generated from RAA adopters could also be used as a buffer</li> <li>• While budgets have been set for the first three years, each RAA will operate a yearly budget review and setting exercise to ensure flexibility</li> <li>• The RAA's will aim to become demand led organisations by the end of year 3 at which point, future budgets will be based on unit costs and likely future demand</li> </ul>
--	--	---

**Recommendations:**

The Mayor in Cabinet is recommended to:

1. Agree and sign off the Tower Hamlet's specific content in the Adopt London East Business case, specifically:
  - Agree to contribute the current adoption services budget for Tower Hamlets and a one-off transitional payment of £42,684 to cover additional costs, as laid out in the financial section to fund the RAA in year 1. Budgets will be reviewed and agreed annually from year 2 onwards in consultation with the RAA partnership board
  - Agree the TUPE transfer of staff in scope on or before 1<sup>st</sup> July 2019 and undertake a consultation with staff impacted by the transfer of the service. **NB** – The specifics of the transfer process will be undertaken in consultation with both staff and trade unions to ensure that the transfer does not negatively affect terms and conditions of employment
  - Agree the other overarching principles in the document. The partnership will use these principles to design the necessary functions of the RAA between now and the go-live date.
  - Authorise the Corporate Director, Children and Culture to enter into all relevant agreements and other documentation in order to facilitate the Council's involvement in the RAA as referred to in this report.
  
2. Note that an Equalities Impact Assessment is being undertaken in respect of the impact across all of the local authorities involved as set out in the business case

**1. REASONS FOR THE DECISIONS**

- 1.1 The business case seeks approval for the release of local authority funding to finance Tower Hamlets' portion of the regionalised model. The business case also sets out some likely savings areas (in local authority) with indicative ranges. The potential effects of the regional adoption agency will be felt

across all wards and will have a significant positive impact on children and adopters across the region.

## **2. ALTERNATIVE OPTIONS**

- 2.1 There are no viable alternatives to this option. The Department for Education's expectation is that all Local Authorities are part of a regionalised model by April 2020. Whilst a number of options were considered early on including the creation of a new single entity to deliver adoption services across East London, the preferred option is to combine the four London boroughs with one borough becoming the host authority. Creation of new single entities is time consuming and costly and not a preferred option elsewhere with RAAs already live.

## **3. DETAILS OF THE REPORT**

It is proposed that a new East London Regional Adoption Agency (RAA) is created through combining the adoption services for the four East London Boroughs of Havering, Tower Hamlets, Newham and Barking and Dagenham. These agencies wish to build on the success of their existing services to improve performance in meeting the needs of children who require permanence through adoption, by bringing together the best practice from each authority within the RAA. This proposal forms part of an overarching project to develop four RAAs across London.

The implementation of the new RAA for East London follows substantial project work from March 2018 where the decision was taken and agreed with the DfE to pursue four separate RAAs in London, not a single RAA as had been discussed through 2016-17. The East London project has the benefit of being able to access previous learning from those RAAs across the country that are already live. Project Managers across London have also worked together to ensure as much consistency pan-London as possible whilst retaining an awareness and consideration of the specific demographics and other issues specific to their region and within their region. The East London RAA will be known as Adopt London East (ALE) and will build upon the previous positive practice established within the East London consortium – East London Adoption and Permanence Consortium (ELPAC) which is already delivering services effectively across the East region.

Over the summer 2018, and prior to formal agreement of this business case in autumn 2018 further work has begun to develop a service delivery model and engage staff in coproduction of the model which will enable East London to move towards regionalisation in specific areas where it makes sense to do so. Over the summer more detailed planning work has also been underway to support the successful implementation of ALE. This work will continue with the four member boroughs through the winter with transition planning and implementation beginning as soon as the business case is formally agreed.

This business case is founded on a number of key assumptions:

- There is one host for the East London RAA and it is proposed this is Havering; however, it is expected that staff will be located across all four LA sites.
- There is one Head of Service and some functions, still to be determined, that may be centrally located. Any centrally located functions, likely senior management and back office will be located in Havering.
- Adoption practices and processes will be the same across all 4 local authority areas
- All agencies have the resources available to actively lead on and participate in agreed work streams and achieve the deliverables within agreed timescales set out in the plan;
- Adopt London East (ALE) will work in partnership with the child's social worker at the earliest possible point, at the discretion of each Agency Decision Maker but in most cases at the point of the Placement Order being granted
- Staff affected transfer to Havering's Terms and Conditions, including pension rights, holiday entitlements and sick pay policies. Staff will be transferred to the host authority under the Transfer of Undertakings (Protection of Employment) regulations (TUPE);
- Any applicable redundancy costs will be underwritten by the currently employing LAs as this will not be funded by the DfE or the host;
- Premises – ALE will be delivered from office bases in all four locality areas. This will ensure: continuity of provision as far as possible; close working relationships with children's social workers and easy access for local communities to a service within their community. A small number of workers undertaking central functions (mainly senior management and back office staff) will work from a central base in the Host authority. All RAA workers will also be expected to attend meetings within the central base in the host authority for some portion of the working week.
- All RAA workers will also be expected to work across all of the 4 local bases if the needs / demands of the service require it

## **The Principles**

The principles which this business case has followed were agreed by the Adopt London Executive Board which was delegated by the Association of London Directors of Children's Services (ALDCS) to oversee the development of the four London Regional Adoption Agencies. These principles have been endorsed by the DfE:

1. Local authorities involved in Adopt London and each of the four RAAs are committed to collaborating adoption arrangements so that the best interests of children and their adoptive families are secured and kept at the forefront of decision-making.
2. Adopt London will provide an overarching framework for enabling effective coordination, coherence and partnership working across London.
3. Adopt London authorities, and the four RAAs will make sure that there is consistency of approach in relation to key strategic and operational decisions, e.g. about whether staff are transferred under TUPE arrangements or

seconded. Project teams in the four RAAs and RAA governance arrangements should reflect the ambition to promote such consistency of approach.

4. We are committed to working effectively together with Voluntary Adoption Agencies (VAAs), making sure that their unique and important contribution is maximised and that VAAs are involved in the development of the RAAs and Adopt London.
5. The focus of work over the next 18 months will be on establishing the four RAAs; in phase two, developmental work on the Adopt London hub will progress. We will use the Adopt London Executive Board to operate a virtual Hub in the coming period, with a view to exploring options for joint commissioning across London, maintaining common design principles for the spokes and exploring opportunities for further development of the Hub in phase 2.

### **Service delivery model, performance targets and budget**

Adopt London East is committed to designing services capable of improving outcomes for children for whom the plan is adoption through:

- Placing more children more quickly
- Placing more children in an early permanence placement
- Providing quality support to ensure fewer placement disruptions and happier families
- Improving timescales for adopter assessments
- Assessing adopters well; leading to good and speedy matches

### **Proposed service delivery model**

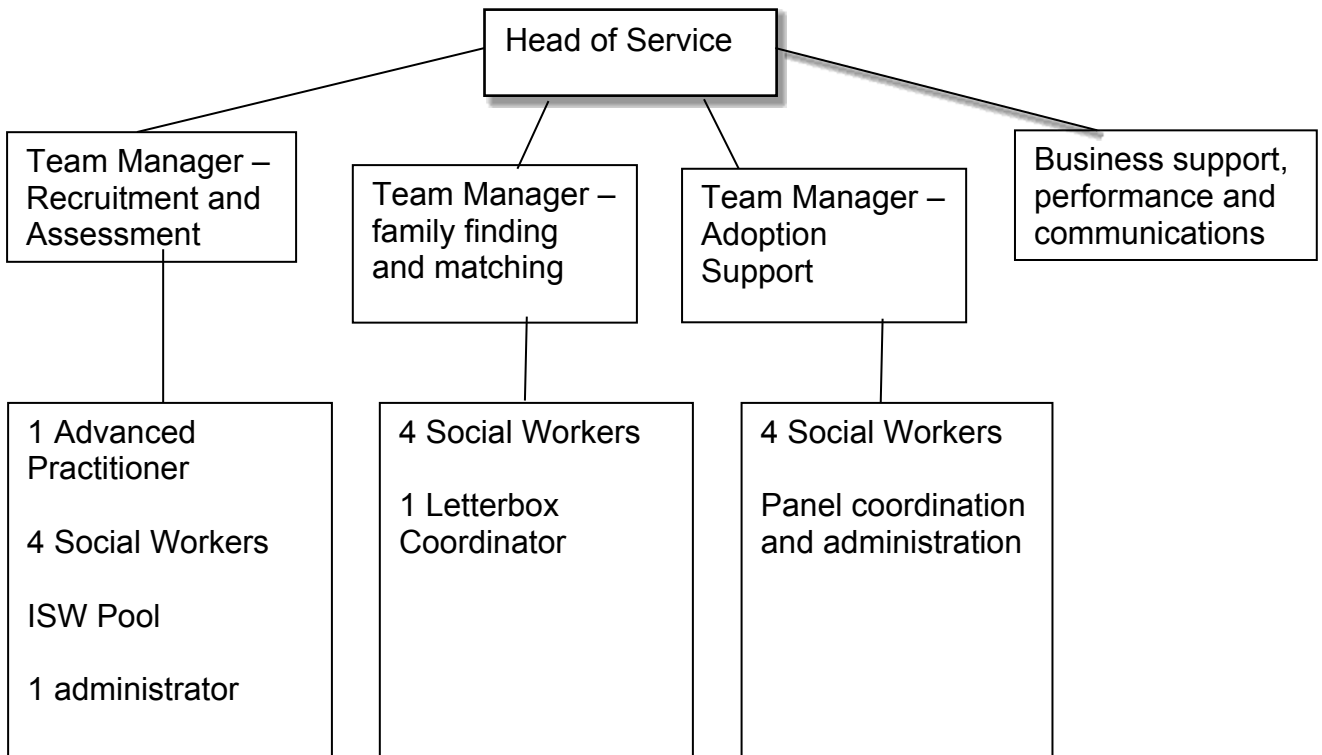
The proposed service delivery model is based on an evidence base of what works in Adoption and on initial consultation with adopters and key stakeholders. The detailed service design will be developed through co-production with staff and all key stakeholders as detailed in section 2.3. The rationale for the design principles is explored in more detail in section 3.3

The service delivery model includes one head of service and three team managers who manage the three key thematic areas in Adoption; recruitment and assessment; family finding and matching and adoption support.

Team managers will manage teams who will have workers allocated to local areas but operate as a pan East London service. All workers will be expected to operate outside specific Local Authority boundaries according to need and to meet regularly as a team.

Performance expectations and accountabilities of the RAA, Local Authority, each team and each worker must be clear.

This outline structure will be subject to further modelling and may change in some aspects of detail through the next phase of development; thematic operational Task and Finish Groups. These groups will involve first line managers, adoption social workers and adopter representatives in co-production of the working model.



## **Governance**

The Head of the new service will be directly managed by the Assistant Director in the London Borough of Havering.

The RAA will have an Executive Board made up of the four DCS's (or delegated to the Assistant Director/Divisional Director). The Executive Board will meet each quarter and will review performance data and financial spend/income. The governance arrangements of the RAA will also play a vital role in overseeing the quality and consistency of practice across the RAA footprint. This role in the oversight of performance will reduce variability and allow for consistent scrutiny of the quality of practice. In this way, the Executive Board will have a key role to play in strengthening the quality of permanence planning for children who require adoption from across the region.

The Head of the RAA service will provide an annual report which will go to each of the respective senior management meetings and will be presented by the RAA Service Director. In addition to this, it is anticipated that the RAA will also be required to report to the Mayor's Advisory Board on an annual basis in order that performance and "value added" can also be scrutinised at a local level.



## **RAA performance targets**

A detailed analysis of current performance has been undertaken (see section 2.4). This has been reviewed against best practice nationally and in the region. This has informed the setting of SMART performance targets for ALE. (See section 3.6)

Target	Current	Year 1	Year 2	Year 3	Improved Outcomes
Adopter recruitment	29	36	40	45	<ul style="list-style-type: none"> <li>- Children placed within East London</li> <li>- Improved placement choice</li> <li>- Improved adopter confidence</li> </ul>
Family finding and matching	57	60	65	70	<ul style="list-style-type: none"> <li>- Children placed in East London</li> <li>- Increased number of children adopted</li> <li>- Improved placement choice</li> <li>- Improved matching through placement with adopters known to agency</li> </ul>
Adopter support (no established numerical baseline)	Individual worker offer	Development of core offer Improved engagement with providers Improved use of grant funding			<ul style="list-style-type: none"> <li>- Fewer adoption disruptions</li> <li>- Improved outcomes for adopted children</li> <li>- Improved adoptive family satisfaction</li> </ul>

Whilst it is important to highlight that the performance projections have been constructed robustly and based on trusted performance modelling over the past five years, it is also important to highlight some of the risks to the project. These might be;

- The projected number of Adoptions do not materialise
- The needs of some children are so specialist that we need to place more children outside of the RAA and thus incur additional costs.
- The number of anticipated adopters do not materialise.

The mitigation against these challenges is that much of the modelling has taken a mid-point projection based on the activity over the past five years. This takes into account the slightly lower levels of adoption activity over the past two years. The agreement that performance and financial monitoring must be reported quarterly to the Executive Board should allow for any emerging financial problems to be identified and addressed by the RAA in good time.

## Budget

The current budget reflects staffing to the top of the scale at all grades.

A detailed rationale for budget setting and predicted savings is presented in section 4 of the full business case

Current adoption budget	
<b>TOTAL</b>	<b>1,398,183</b>
Cost of new model	
Staffing costs	£1,327,960
Non Staffing costs	£279,396
<b>TOTAL</b>	<b>£1,607,357</b>
Variance	
<b>TOTAL</b>	<b>£209,727</b>

## Financial commentary

- The total shortfall between the current contributions and the proposed RAA budget is £209,727. This shortfall will be funded by a one-off contribution of 15% of total budget across all local authorities. The contribution from Tower Hamlets is the lowest of the four participating Local Authorities. (see table below)

<u>Local Authority</u>	<u>Current contribution</u>	<u>15% of total budget to finance shortfall</u>	<u>Contribution to RAA in year 1</u>
Havering	£313,929	£47,089.35	£361,018
<b>Tower Hamlets</b>	<b>£284,566</b>	<b>£42,684.90</b>	<b>£327,251</b>
LBBD	£392,646	£58,896.90	£451,543
Newham	£407,042	£61,056.30	£468,098
Total	£1,398,183	£209,727.45	£1,607,910

- It is important to note that this is the maximum possible shortfall between current budgets and the proposed RAA budgets as salaries have been costed at the highest possible spinal point. As such, the RAA partnership board will concentrate on partnership and risk sharing agreements to ensure that any underspend and savings are redistributed equitably among its member local authorities
- This business case sets out a “highest possible cost” funding model and ensures that the amount spent on the model in years 1,2 and 3 can be no more than the stated figure
- As such, the outline cost of the model is the same for years 1,2 and 3, in the knowledge that the spend will definitely be lower than the agreed amount

- As shown above; each authority will make an upfront extra commitment of 15% of their total budget to fund the shortfall made up by the non-cashable elements of their budgets and the extra costs of the RAA in year 1
- The methodology for meeting this shortfall is based on reducing the number of interagency placement fees paid out for children in the RAA footprint. At present Tower Hamlets has to pay an interagency fee of £31k to use an adoptive couple who live outside Tower Hamlets and were assessed and approved by another Local Authority.
- Over the past three years Tower Hamlets has needed to purchase four placements (overall cost 124k) from Local Authorities within the proposed East London RAA footprint. The launch of the RAA would mean the ending of paying interagency fees between the four LA's. Based on the history of the previous three years this cost reduction would cover the cost of the additional 42k, as well as potentially reducing other overall costs.
- There is also significant scope for increasing income from providing East London RAA adopters to other RAA's
- The risk sharing and partnership agreements (above) will set out clear methodologies for budget setting and benefits (financial and other) sharing as a result of the RAA achieving its targets.
- Further savings against Children in Care budgets by each Local Authority through improved rates of leaving care for adoption and improved timeliness of placement

## **Tower Hamlets specific costs**

### **1) Overview of costs**

- Tower Hamlets will contribute their current adoption services budget of **£284,566**
- There will also be a transitional payment of **£42,684** to cover the extra costs (A new regional head of service and increased hosting costs) of the regional model
- Interagency budgets will not come into the model but the RAA will hold a virtual pool of funding and will share costs among the local authorities equitably

### **2) Principles**

- The establishment of the new RAA is about improved performance across the region and the business case sets out an 'invest to save' model. The extra transitional costs will be clawed back by local authorities through reductions in interagency placements.
- For pragmatic reasons, the model has been costed at the highest possible cost. The feedback nationally is that RAA's can be more expensive in their formative years. This model allows for flexibility, changing demand and even growth, in an area in which demand pressures are unpredictable and constantly changing.

- The RAA will share risk across its constituent members in a fair and equitable way. Local performance (particularly in year one) will determine how costs, underspend, and savings are apportioned across the local authorities.

### 3) What does this mean for Tower Hamlets

- Tower Hamlets spend, on average, £160,000 per year on external adoption placements. At a minimum, we expect this figure to drop by
  - Circa. £60,000 in year 1 (a reduction of 2 external placements).
  - Circa. £90,000 in year 2 (a reduction of 3 external placements).
  - Circa. £120,000 in year 3 (a reduction of 4 external placements).
  - This will cover the cost of the transitional payment and more in all future years.
- We also expect a saving of around £5,000 per year (from year 2) to the LAC budget as a result of improved performance on timeliness and rates of leaving care for adoption (see full business case)
- Any underspend against the model (which has been costed at the highest possible rates) will also be able to be drawn down or reinvested in the regional model) by the partnership

### 4) Predicted spend for Tower Hamlets

Tower hamlets	Current Adoption Budget	Transitional payment	Average interagency spend	Other savings to LAC budget	Total spend
18/19	£ 284,566.00	£ -	£ 160,000.00	£ -	£ 444,566.00
19/20	£ 284,566.00	£ 42,684.00	£ 100,000.00	£ -	£ 427,250.00
20/21	£ 284,566.00	£ -	£ 70,000.00	£ 5,000.00	£ 354,566.00
21/22	£ 284,566.00	£ -	£ 40,000.00	£ 5,000.00	£ 324,566.00

## 4. EQUALITIES IMPLICATIONS

- 4.1 An equality impact assessment will be completed in respect of employees across all of the local authorities joining the RAA as part of service restructure / TUPE process. An equality impact in respect of service users is currently being completed.

## 5. OTHER STATUTORY IMPLICATIONS

### HR implications

- 5.1. The HR comments in the business case set out the current position with regard to the applicability of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). In line with the minimum expectation of the DfE, staff in scope of this new East London Regional Adoption Agency

are expected to transfer into the host borough, Havering Council, under TUPE regulations.

- 5.2. It is envisaged that these proposals will initiate significant changes to the way Adoption services are delivered across the four boroughs and ultimately new ways of working.
- 5.3. The TUPE regulations impose limitations on the ability of the new employer and employee to agree a variation to the terms and conditions unless there is a genuine economic, technical or organisational (ETO) reason:
  - There needs to be a valid business reason for the change
  - The ETO reason must 'entail changes to the workforce'. This means that changes to workforce numbers or job functions must be the objective of plan
  - Changes to location of work are now covered as an ETO reason under TUPE. This means that TUPE-related relocations will not be treated as automatically unfair but should still be treated in line with the normal employment principles in terms of formal consultation.
- 5.4. Therefore, it is likely that as well as informing/consulting as part of the TUPE process, formal consultation will take place with staff and unions on the new structure, location and job descriptions triggering a change management process.
- 5.5. It is recognised that all local authorities are likely to follow a similar change management process. However, a proposed Change Management "Terms of Agreement" has been developed and aims to provide clarity and equity between the boroughs throughout the management of the change process. This agreement has been consulted upon with HR leads across the boroughs and has been shared with the unions.
- 5.6. Both the TUPE and restructuring consultation processes will be managed in line with the ACAS guidelines and Tower Hamlets' Handling Organisational Change Procedure and will run concurrently.
- 5.7. Where possible, the existing boroughs will seek to redeploy their own employees prior to the transfer date. Any redundancy costs will be the responsibility of the incumbent borough. The host borough will need to consider additional ongoing liability cost which may not be covered in on-costs i.e. Barrister costs associated with an employment tribunal and who will be responsible for those costs.

#### Pensions:

- 5.8. All local authorities' pension provisions are provided under the Local Government Pensions Scheme. The actuary has confirmed that a bulk transfer is only applicable if 10 or more members are transferring from any one previous organisation.

- 5.9. Each local authority is unlikely to be transferring 10 or more members, therefore, the process for bulk transfers is not applicable. The process that will need to be followed is that of a normal transfer from a previous Local Government Pension Scheme i.e.:
- The members will be admitted to the London Borough of Havering pension scheme and will then be subject to 22% employer contribution rate (the employee rate is dependent upon their salary)
  - The pension team will write to the previous authorities requesting transfer estimates, calculated in accordance with actuarial guidance issued by the Secretary of State
  - Once the details are received, the pensions team will write to the members, highlighting the 'pros and cons' of transferring and ask them to make their decision.
  - If members elect to transfer, the pension team will ask the previous authority to make the payment of the relevant transfer value.
  - The transfer value, paid from the pension fund, should be enough to cover previous pension liabilities so there is no need for any budget from individual services for pension costs.
- 5.10. However, if any local authority exceeds the bulk transfer number of 10 members, then the process will need to be reviewed and could impact on timescales and costs. The above process will be factored into the formal consultation period.

## **6. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 The contribution of £284.6K being sought by the RAA annually over the next three financial years appears reasonable when compared with Tower Hamlets (LBTH) direct cost of undertaking the adoption function. The intention is to transfer this amount to LB Havering (RAA host borough).
- 6.2 The one-off £42.7K being requested is to meet transitional management and back office costs of the RAA. It is assumed this would be funded from avoided inter-agency fees that would have been payable to the local authorities (LAs) within the RAA. Analysis of the previous inter-agency fees paid by LBTH indicates a payment of circa. £124K in the last three years to LAs within the proposed East London RAA footprint.
- 6.3 Redundancy costs may be incurred should any of the staff to be TUPE transferred to the RAA opt for early retirement although this is not currently envisaged.

## **7. COMMENTS OF LEGAL SERVICES**

- 7.1. The Education and Adoption Act 2016 amends the Adoption and Children Act 2002, so that local authorities are no longer required to maintain an adoption service within their area but may secure provision by other local authorities or registered adoption societies. The Secretary of State may direct one or more local authorities to make arrangements for all or any of their adoption

functions to be carried out on their behalf by another local authority or adoption agency, through the formation of regional or sub-regional adoption agencies ('RAA'). The Department for Education has strongly indicated that it expects all local authorities to make such arrangements to improve outcomes for children. Failure to enter into an RAA voluntarily may therefore result in the Secretary of State issuing directions to the Council to join a specific RAA.

### Procurement Implications

- 7.2. The changes required by the Education and Adoption Act 2016 and referred to in this report have the effect of the Council buying back its own services from Havering. However, the Council is entitled to do this without competition as regulation 12 of the Public Contracts Regulations 2015 allows a local authority to enter into a collaboration agreement for the provision of services provided that the intention is for both authorities to satisfy the carrying out of a similar function. Therefore, the proposal is lawful for the purposes of European Procurement law.
- 7.3. However, such a collaboration agreement does not allow for the generation of profit although the input from the members of a collaboration does not need to be monetary only. This can include the input of staff, facilities and other elements common to both authorities.
- 7.4. The Council will still be responsible for ensuring that such a collaboration agreement represents Best Value and therefore benchmarking with other such arrangements should take place as well as appropriate monitoring of outcomes to ensure quality of service is maintained. The monitoring identified in the report will allow the Council to meet this legal obligation.
- 7.5. It may be that the RAA will need to purchase further services for use by the member boroughs. However, whilst it is likely that the RAA (Havering) will carry out the relevant competitive exercises prior to the purchase, this does not absolve this Council of its duty to comply with the Procurement Law. Therefore, this Council should have an input in the methodology of procurement of items which we will ultimately use as part of the service.

### Employment and Equality Considerations

- 7.6. The transfer of this service will have staffing implications. It is very likely that TUPE will apply however the proposal to transfer staff to a location outside of the borough does raise some issues. Most employment contracts contain mobility clauses which provide that staff can be required to work at any of the Council's locations. Recent case law states that this can only relate to locations that were known to the employer and employees at the time of the contract. It did not and was not capable of including locations that became locations operated by the employer only after and as a consequence of the transfer.
- 7.7. This confirms the position that a change in location is potentially covered by the TUPE Regulations, although for each employee a view needs to be taken

about whether the effect of the change is substantial enough to constitute a material detriment to the employee and therefore result in the employee being deemed to have been dismissed rather than transferred (and therefore entitled to a redundancy payment).

- 7.8. Care must also be taken to ensure that any proposed structure and reorganisation of staff includes all relevant staff in the scope of the organisation from all the boroughs in the scope of the reorganisation.
- 7.9. When deciding whether or not to proceed with these decisions Cabinet must also have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristics and those who do not (the public sector duty). The equality analysis will be required to consider the impact on staff, and as this will need to consider all of the staff impacted by the move to an RAA, Havering will need to undertake this exercise to assess the overall impact across the four local authorities.
- 

## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- None

### **Appendices**

- Adopt London East Full Business Case

### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- Pan-London RAA business case

### **Officer contact details for documents:**

Lissa-Marie Minnis – [Lissa-marie.minnis@towerhamlets.gov.uk](mailto:Lissa-marie.minnis@towerhamlets.gov.uk)