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Fostering Soft Market Test

Purpose

- 1.1 The council has invested significant corporate resources, time and energy over the last six years to increasing the number of internal foster carers and decreasing the reliance on the independent and private sector fostering market. A number of initiatives have been implemented over this period with the last one, The iMPower Family Values project, ending in 2016. The three year change programme did not yield the required or expected service improvements and current statistics for November 2018 show that 70% of children in care are placed with an external Independent Fostering Agency. This is a large contributing factor to the People Services in-year budget pressure.
- 1.2 In 2017, the Council chose to undertake a "soft market test" and consult with external providers of fostering services to determine if there was an appetite for a different commissioning arrangement for the delivery of all or part of Derby's fostering service. This report provides the outcome of the soft market testing exercise.
- 1.3 The options arising from the soft market test analysis were;
 - To change the provider of recruitment and assessment of foster carers
 - To establish a shared Service via tri – borough arrangements
 - To establish a separate organisation with its' own governance i.e. Community Interest Company (CIC/Social Enterprise, Co-Operative) or Arm's Length Management Organisation (ALMO)
 - To procure the whole service/ enter into partnership with a charity or an Independent Fostering Agency
- 1.4 A key issue for all options is that any change still may not increase the number of foster carers if the issue is Derby-centric population. The advantages and disadvantages for each option are in section 4 of the report providing the rationale, on balance, for the option recommended. Options 2-4 would take considerable time to establish, could not provide outcomes in the short term, result in high cost implementation without guarantee of any increased performance or cashable savings being realised.
- 1.5 As part of the Cabinet's Medium Term Financial Plan, option 1, Changing the Provider of Recruiting and Assessing Foster Carers, is proposed and currently part of public consultation until 1 February 2019. Public consultation documents are attached at appendix 1 and 2.

Recommendation

- 2.1 For Children and Young People Scrutiny Review Board to consider the proposal of Changing the Provider of Recruiting and Assessing Foster Carers as part of consultation.

Reasons

- 3.1 The rationale is underpinned by the sufficiency of foster carers being the paramount area for improvement. The support service received by our carers is assessed as good and retention rates are high, therefore by applying a targeted approach, this option is both the least disruptive and also the most expedient of the options to implement that will gain the desired results.
- 3.2 Feedback as part of the soft market testing exercise evidences that there is specialist knowledge and capability in the provider market in recruiting foster carers and this area of the market has shown year on year advances in their competition to the detriment of local authorities nationally.

Supporting information

- 4.1 The recruitment and assessment of foster carers is a statutory requirement.
Derby's data for recruitment of foster carers compared our statistical neighbours over the last 4 years is as follows;

Number of applications approved (long-term only)

Derby				Statistical Neighbours			
2014-15	2015-16	2016-17	2017-18	2014-15	2015-16	2016-17	2017-18
10	5	5	5	20	15	15	N/A

In 2015 just under 50% of all Derby's foster placements were with an Independent Fostering Agency in 2018 it has risen to 63%. In-house foster carer numbers have remained predominantly static, demonstrating strength in ability to retain carers once approved. However the rise in demand for placements and looked after children over this period demonstrates that recruitment is consistently not an area of strength for Derby fostering service.

- 4.2 The Soft Market Testing Exercise was launched on 24 October 2017 with a closing date of 30 November 2017, extended to 15 December 2017 to allow the optimum number of Providers to engage. The Council outlined their preferred model in relation to fostering as; *"to source 100% of required placements at a reduced cost to current provision. This relates to the total cost of fostering services, including those provided by internal (in-house) and external (IFA) providers."*

4.3 12 submissions were received from a mix of commercial and charitable organisations and Providers put forward ideas and examples of how this could be achieved and where they had worked closely with other Local Authorities. They expressed a genuine interest in working further with the Council to develop a solution.

4.4 The main ideas submitted were:

Option 1. To change the provider of recruitment and assessment of foster carers

Option 2. To establish a shared Service via tri – borough arrangements

Option 3. To establish a separate organisation with its' own governance i.e.

Community Interest Company (CIC/Social Enterprise, Co-Operative) or

Arm's Length Management Organisation (ALMO)

Option 4. To enter into partnership with a charity or an Independent Fostering Agency

4.5 Option 1. To change the provider of recruitment and assessment of foster carers

Advantages

- Recruitment will be provided by a Provider with specialist knowledge, tools and infrastructure to support recruitment, resulting in a higher expected conversion rate.
- Tried and tested model – Liverpool City Council and Rhondda Cynon Taf County Borough Council have outsourced this provision and provided positive feedback.
- An expected higher number of enquiries due to more specialist market profile and targeted marketing.
- A significantly lower cost conversion rate per approved foster carer
- Least disruptive option to current services and faster implementation timescale than other options.
- Preferred option with Derby's existing foster carers.
- Enables the Council to re-direct existing social care resources to support and retention of foster carers.
- Possibility of a payment by results model.

Disadvantages and Risks

- May not meet the contract target numbers of Foster Carers to be recruited. Mitigated by a clause to recoup costs and 'over-flow contract' with another contractor
- Fostering capacity and market saturation in Derby may have a negative impact on the success of this option.
- Will require a robust assurance process to ensure there is no detrimental to the quality of foster carers recruited.
- Staffing implications, staff may leave the council if the external procurement is a TUPE transfer, staff may have to be made redundant or redeployed.
- Conflict of interest if provided by an Independent Fostering Agency, however this service can be provided by a charitable or voluntary sector provider.

4.6 Option 2. Establish a shared Service via tri – borough arrangements

Advantages

- Potential benefit for Derby would be greater due to the lack of fostering capacity and market saturation in the city.
- Tried and tested model in London Boroughs in adoption and fostering, achieving outstanding via Ofsted.
- Creates a wider area from which to source placements, increasing sufficiency and eliminating some local competition.
- Achieve consistency and best practice.
- Some evidence of local partnerships being established in other areas (i.e. D2N2 RAA)
- Foster carers retained as local authority resource

Disadvantages and Risks

- Partnership agreement across the region is not certain and development would take a significant amount of time to establish.
- Fostering capacity and market saturation in Derby may have a negative impact on the success of this option.
- May be limited appetite from the Shire Authorities as limited advantages for them (sufficiency is less of an issue).
- Recruitment issues are Derby specific (population) so performance doesn't improve therefore would require something fundamentally different in addition to pooling to mitigate this risk, i.e. different recruitment strategies, different processes, different focus on marketing the LA
- Would need to ensure it is a partnership and do not inadvertently create a contract. To avoid a contract between the City Council and the other authority/ies, the City Council would need to continue to directly fund its portion of the service and retain a degree of management responsibility.

4.7 Option 3. Establish a separate organisation with its' own governance i.e. Community Interest Company (CIC/Social Enterprise, Co-Operative) or Arm's Length Management Organisation (ALMO)

Advantages

- Softer version of external procurement which may be more acceptable to foster carers, staff and politically.
- Sole purpose would be as a specialist in fostering therefore more targeted activity focussed in achieving fostering outcomes.
- Provides greater flexibility, potential for innovation and access to external funding and grant funded services.
- Risk managed and minimised via the governance and strategic arrangements.
- The council has experience in other Directorates i.e. Building Control has joined up with six other local authorities to form a limited company.
- Provided the Company falls within the "TEKAL" procurement exemption, the Council could award the company a contract to undertake all its foster carer recruitment without the need for a procurement process.
- Could evolve from an Option 2 partnership model

Disadvantages and risks

- Lack of clarity that any cashable savings would be realised and high cost of outsourcing.
- Not a tried and tested model in the area of fostering for a local authority. However, one foster care co-operative and social enterprise exists.
- Model would need to be worked through to ensure strong leadership and governance.
- Set up costs of running a company i.e. overheads/infrastructure will be high.
- To be effective, model would need income from other authorities - the organisation would have to generate good outcomes before others would invest.
- Still may not improve performance – Derby population.
- Ability of the workforce to be self-sufficient.
- Risk that if company becomes successful in bidding for other authorities' work, it would no longer qualify as a TEKAL company and the council would no longer be able to directly award its own contract for foster carer recruitment to the company (loss of control for the council and risk of undermining the Business Plan for the Company)

4.8 Option 4. Enter into partnership with a charity or an Independent Fostering Agency

Advantages

- Soft market testing highlighted positive feedback from existing providers to this option.
- May allow for better cost control.
- Specialist Provider which will result in less local authority governance risk.
- Likely to provide access to a wider scope of fostering provision i.e. more complex and specialist

Disadvantages and risks

- Lack of clarity that any cashable savings would be realised and high cost of outsourcing.
- Relatively untested (TACT 10 year +10 year contract).
- Derby foster carers may choose to transfer to another local authority, depleting in-house foster carer numbers further and impact on sufficiency issues.
- Complexity of contractual arrangements to manage cost control.
- Potentially attractive/feasible if just fostering services.
- Provider may desire control of permanency arrangements, SGO and other kinship orders which are out of scope, as part of management of finances is management of flow. RAA may impact attractiveness.
- Affects a much larger staff group.
- IFA will be 'for profit' and may not share Derby's vision and values, impacting on 'fit' to Derby politically, staff and foster carers.'
- Derby currently has a tender underway for fostering support. Further changes in this area would be difficult to separate out at the current time.
- Loss of existing/current foster carers.
- Contract cost may be higher to absorb risk.
- Can take several years for evidence of savings/cost reduction.

Public/stakeholder engagement

- 5.1 The consultation is open to all staff, stakeholders and the public and will be open for comment until 1 February 2019.
- All directly affected staff have been met with and a further meeting with senior officers and unions is planned on 5 December 2018
 - All foster carers have been sent a copy of the consultation documents and Senior Officers met with the Foster Carers Association on 19 November 2018.
 - The Children in Care Council were met with on 7 November 2018
 - All indirectly affected staffing within People Directorate have been sent a copy of the consultation documents including
 - Fostering Team
 - The KEEP
 - Children In Care Teams
 - Locality Social Work Teams
 - Fostering Panel

An Equality Impact assessment is planned to be undertaken during the course of the consultation to inform the outcome.

Other options

- 6.1 Given the history of Derby managing and delivering its own sufficiency, doing nothing is not an option. Options 2 – 4 have been considered but ruled out due to disadvantages, the time required to implement and disruption to wider service provision.

Financial and value for money issues

- 7.1 Only 30% of CIC requiring foster care are placed with internal provision. The costs of the placements with Derby City foster carers is significantly less than those bought from the independent sector.

Legal implications

- 8.1 The options appraisal has given rise to a number of legal considerations, depending on the option/model being considered. Legal Services (in conjunction with Procurement) will advise on the tender process and required documentation for procurement of the external provider and on the appropriate contractual documentation

Option 1 - Cabinet approval to commence procurement will be required. To be followed by a procurement process.

Option 2 - Would be a partnership between the four authorities, with the arrangements governed by an inter-authority partnership arrangement. Initially one authority may agree to host the combined service and this would be reflected in the agreement. There would be no transfer of staff in the first instances but staff could be seconded to the host.

Option 3 - TEKAL – DCC maintains a degree of control of the company and no less than 80% of work undertaken by the company is done for DCC and a maximum of 20% of income from elsewhere.

- Asset transfer agreement
- Ongoing services arrangement
- Shareholders – owned by LAs
- Directors have director responsibilities.

Could be efficiencies if join with another LA. Officers/members of the Council appointed as Directors/Officers of the company must understand fiduciary duties are owed to the Company not the Council, which can be difficult where the interests of the two diverge.

Option 4 - Generally Legal Implications as for Option 1: Staff TUPE, would require procurement, buildings/premises agreements, some other contracts are tied into peripheral services. May be difficult to extrapolate. Foster carer contracts to be novated. External procurement of statutory services would need tighter controls

Other significant implications

- 9.1 Personnel: The options appraisal has given rise to a number of human resource considerations, which are applicable to all four options/models.

Option 1 - This could be a TUPE (Transfer of Undertakings Regulations) situation. The TUPE regulations often apply when activities are outsourced in this way. If so, staff dedicated to the contract would transfer to the new provider. If TUPE doesn't apply, alternative arrangements might be possible (secondment* of staff to provider), but more info about the proposal would be required in order to consider this. Redundancies could arise if there is no TUPE

Option 2 - As above

Option 3 - As above

Option 4 - As above

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Emily Feenan	29 November 2018
Finance	Alison Parkin	
Service Director(s)	Andy Smith	30 November 2018
Report sponsor		
Other(s)		