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| <b>CITY OF<br/>WOLVERHAMPTON<br/>COUNCIL</b> | <b>Cabinet</b><br><b>8 September 2021</b> |
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| <b>Report title</b>                            | Local Government Social Care Ombudsman (LGSCO) Report       |  |
| <b>Decision designation</b>                    | AMBER   |  |
| <b>Cabinet member with lead responsibility</b> | Councillor Beverley Momenabadi<br>Children and Young People |  |
| <b>Key decision</b>                            | Yes   |  |
| <b>In forward plan</b>                         | Yes   |  |
| <b>Wards affected</b>                          | All Wards   |  |
| <b>Accountable Director</b>                    | Emma Bennett, Director of Children's and Adult Services     |  |
| <b>Originating service</b>                     | Children's Social Care                                      |  |
| <b>Accountable employee</b>                    | Mark Tobin<br>Tel<br>Email                                  | Head of Service<br>07970 266 496<br>mark.tobina@adoptionaheart.co.uk |
| <b>Report to be/has been considered by</b>     | Leadership Team<br>Strategic Executive Board                | 19 August 2021<br>26 August 2021                                     |

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**Recommendation for decision:**

The Cabinet is recommended to:

1. Endorse the City of Wolverhampton Council (CWC) and the regional adoption agency service response to the Local Government Social Care Ombudsman (LGSCO) finding.

## 1.0 Purpose

- 1.1 To provide an overview of the circumstances of the Local Government and Social Care Ombudsman's (LGSCO) decision report for the CWC and the regional adoption agency, Case ID 19011134.
- 1.2 To provide the proposed response from the Council / regional adoption agency to the required remedies within the LGSCO report.

## 2.0 Background

- 2.1 The LGSCO has issued a report following its investigation of a complaint against the CWC/regional adoption agency. The regional adoption agency provides adoption services for the Council, along with Sandwell, Walsall and Dudley. The service became operational in April 2019 and is hosted by Wolverhampton. Therefore, the finding is against CWC.
- 2.2 The complaint was about an individual who made an enquiry about wishing to apply to adopt a child.
- 2.3 The individual originally made an enquiry to Walsall Council prior to April 2019 and was subsequently transferred to the regional adoption agency when the service went live. In May 2019, a Social Worker from the regional adoption agency undertook an initial assessment visit and the outcome of this was a decision not to invite the individual to proceed with the assessment process for adoption.
- 2.4 The main reasons were explained as:
  1. *She had limited childcare experience with the age of child she wanted to adopt.*
  2. *She had terminated a foster care placement, because she could not manage the child's behaviour and the service could not be confident that she would be able to appropriately manage the complex needs of an adopted child, based on statements made during the visit.*
  3. *There was a lack of clarity about the individual's financial position.*
- 2.5 The individual informally disputed this decision and subsequently made a formal complaint in October 2019, on the basis that she did not agree with the grounds for this decision. She also involved her MP. Her complaint was not upheld in stage one.
- 2.6 The individual was unable to accept the outcome of the complaint investigation and with a view to reaching a resolution, Mark Tobin, Head of Service, met with her in November 2019 and explained the factors that led to the decision. In addition, she was given advice and information about steps to take with a view to strengthening her capacity to adopt, with a view to making a future enquiry. She was also provided with signposting information about approaching other adoption agencies. The individual appeared to be more accepting of the decision at the conclusion of the meeting.
- 2.7 The individual subsequently progressed her complaint further and a stage two investigation was undertaken. This also upheld the original decision, although it identified delays in the agency communicating the decision, for which an apology was given to the individual.

- 2.8 The individual indicated that she still wished to pursue the matter further and consequently it was referred to the Local Government Ombudsman. The LGSCO investigation draft report was provided to City of Wolverhampton Council on 10 November 2020.
- 2.9 The LGSCO found that there had been fault on the part of the Council for undertaking initial assessment work with the individual prior to inviting her to formally register her interest to adopt. In addition, it was also concluded by the LGSCO that the complainant had lost the opportunity to discuss her interest to adopt within the statutory guidance (as below) and believed the assessment had been pre-determined.

*“An agency should respond impartially to requests for information and provide this within ten working days through an information session, a visit, pre-planned telephone call or similar arrangement with the potential adopter” (Department of Education’s 2013 statutory guidance on adoption).*

LGSCO:

*“The adoption agency visited the individual in May 2019. This should have been an impartial visit to share information with the individual about adoption, instead, the Council used this visit to assess the individual as a potential adopter, this was a fault. The agency should not have undertaken an assessment until an individual formally registered her interest with the adoption agency”.*

- 2.10 The LGSCO also concluded (as below) that there were no concerns about the decision not to progress the individual into Stage One of the process or the reasons for that decision. It was the timing of this decision (prior to Registration of Interest) that the finding related. It should be noted that this was not the subject of her complaint.

*“I am satisfied the assessment completed by the adoption agency was robust. I consider its decision not to continue to engage the individual in the adoption process was one it was entitled to make and therefore I will not question its merits”.*

- 2.11 The Council responded to the LGSCO advising:

*“Common practice across the adoption sector is not to allow someone to access the adoption assessment process if it is believed the person has significant vulnerabilities and little or no chance of a child being placed with them. It explained, this would be poor use of resources and would mislead the individual who had enquired about adoption. More significantly, in order to effectively meet the needs of children in need of adoptive families the adoption agency must focus its resources strategically in assessing those individuals most likely to become approved adopters. The regional adoption agency’s practice reflects best practice in the sector”.*

- 2.12 Following the draft finding, the Head of Service for the regional adoption agency had positive engagement with the Department for Education (DfE) regarding the discrepancy between practice in the sector and the wording of the statutory guidance. Following further discussion with lead managers and key stakeholders in the sector, the DfE gave consideration to a review of the statutory guidance in relation to this point however in March 2021 they advised that this was not the right time to approach ministers regarding such a review taking place.

### **3.0 Progress, options, discussion, etc.**

- 3.1 The LGSCO issued their final report on 4 June 2021. The original finding of fault as set out above is retained in this however the remedies and recommendations below set out by the LGSCO are different:

*“The Council should review its adoption recruitment procedure to ensure it adheres to the Department of Education’s 2013 statutory guidance on adoption”.*

*“The Council must consider the report and confirm within three months, the action it has taken or proposes to take. The Council must consider the report at its full Council or Cabinet and we will require evidence of this”.*

- 3.2 The adoption agency has already amended its procedure and the information on its website in line and will provide this evidence to the LGSCO.
- 3.3 It should be noted that six out of seven of the required remedies outlined in their report of January 2021 were not included in the final report, following the lengthy correspondence and legal advice taken by the Council. In particular the LGSCO removed the requirement to allow the individual to register her interest or audit its contacts over a twelve month period and write to those individuals. This significant change of approach from the LGSCO would appear to be in response to a challenge from the Council as to why, given no fault was found with the basis of the decision not to progress the individual, it was required to audit previous decisions.

- 3.4 The LGSCO also stated in their final report:

*“The Council was at fault for not having due regard to the Department for Education’s 2013 statutory guidance on adoption. The Council maintains its approach reflected best practice and is replicated nationwide. However, the Department for Education confirmed the statutory guidance will not be amended and the Council has since altered its practice”.*

*“There was a significant difference between what the guidance said should happen when a potential adopter wishes to register their interest and what happened in this Council, and potentially nationwide. That is an untenable situation and reinforces why it is appropriate to issue a report in this case. There is an anomaly between the guidance and practice, which needs to be addressed”.*

- 3.5 On the basis of these findings the LGSCO also stated its intention to issue a Public Interest Report in relation to its findings.

### **4.0 The Council’s Proposed Response to the Final Report**

- 4.1 In relation to the decision to issue a Public Interest Report, to comply with Section 30 of the 1974 Act, the Council placed two notices in local newspapers within two weeks of the Ombudsman publishing the report on 8 July 2021. It also arranged for copies of the report to be made available free of charge to interested persons on request, via the Council’s

website or by contacting the complaints team. Due to the current pandemic, paper copies of the report are not be available at Council offices.

- 4.2 The LGSCO also published information about the finding on their website. Media interest has been very minimal and local.
- 4.3 The Council accepts that although there is substantial evidence that it's practice was consistent with common and best practice in the sector, it should have been made clear to the complainant that she was entitled within the statutory guidance to submit a Registration of Interest to the agency, albeit, the outcome of this process would not have been any different. The LGSCO had also accepted that grounds upon which the complainant was declined were justifiable.
- 4.4 The regional adoption agency/CWC, following legal advice has made a change to its recruitment process relating to the early (pre Stage One) enquiry and information stage as outlined in option one below.
- 4.5 Evidence of these recommendations will be provided to the LGSCO within the required three month timescale.

## **5.0 Evaluation of alternative options**

- 5.1 **Option One** – The service continues to practice with the change below
- 5.2 Initial conversations take place with potential applicants with a view to providing them with information and giving them an opportunity to discuss their circumstances and any issues that may be likely to affect their suitability to adopt.
- 5.3 Guidance and information is offered on the likely impact of any potential vulnerabilities in relation to the timing of their decision to start the adoption process.
- 5.4 All potential applicants are offered the opportunity to submit a Registration of Interest (ROI). The agency has five working days within which to decide about whether to progress any potential applicant from the point of receiving the ROI.
- 5.5 **Option Two** – The service provides every potential applicant with the opportunity to formally Register their Interest after attending an information event and does not undertake any initial conversations or offer guidance to potential applicants about their circumstances and potential strengths or vulnerabilities within their application.

## **6.0 Reasons for decision(s)**

- 6.1 It is proposed that the response is based on option one for the reasons outlined above.
- 6.2 The regional adoption agency service aims to focus its resources strategically by prioritising social worker and other staff time in assessing and approving those applicants who are most likely to meet the needs of the children within the region in need of adoptive families. Option one enables to the service to offer full information and guidance at an early stage. This is considered common and best practice in the sector and the majority of people interested in adopting will work with the information and guidance provided by the

agency and not submit a Registration of Interest if the information about their circumstances suggests there may be vulnerabilities in their application.

- 6.3 Option two would require potential applicants to submit a formal application and provide a significant amount of personal information. This is likely to raise expectations and lead to disappointment where, due to the lack of prior guidance and discussion about their circumstances, the agency decides (within the five working days allowed) to make a decision not to progress their application to Stage One of the process. It would also create pressures on staff time and resources and reduce the ability of the service to target its resources towards those potential applicants most likely to meet the needs of children.

## **7.0 Financial implications**

- 7.1 There are no direct financial implications to the Council as a result of the recommendations of this report. The activity of the regional adoption agency will continue to be met from existing budgets, which are funded by the four partner organisations.  
[JB/23082021/D]

## **8.0 Legal implications**

- 8.1 Advice was taken from legal colleagues as well as a QC and this indicated that option one is compliant with the statutory guidance on the basis that all potential applicants are offered the opportunity to submit a Registration of Interest to adopt.  
[TC/18082021Y]

## **9.0 Equalities implications**

- 9.1 The proposal that the service continues to undertake initial conversations with potential applicants will enable early information to be obtained about their potential suitability to adopt. The outcome of this will support the potential applicant to make decisions about the timing of their application and will enable the service to strategically manage resources and meet the needs of children. It is not the case that the service will be more likely to rule out any potential applicants on grounds of their gender, ethnicity, sexuality, disability or marital status, as a result of this practice. All potential applicants retain their right to submit a Registration of Interest, regardless of the guidance or information provided to them at this early stage. This practice is compliant with the Department of Education's 2013 statutory guidance on adoption.
- 9.2 In considering the LGSCO finding, wide discussions on practice have taken place with key stakeholders in the adoption sector. Leaders from both Regional Adoption Agencies (RAA's) and the voluntary sector attended a work stream meeting in January 2021, at which this practice was fully discussed and it was agreed that best and most common practice in the sector is to engage with potential applicants in this way. CoramBAAF Adoption and Fostering Academy were also in attendance at these meetings.
- 9.3 In addition, a consultation exercise with adoptive parents, which was facilitated by Adoption UK, Adopters were asked:

*“Do you think agencies in providing you with this information about the children, along with initial information, provided by you about your circumstances and suitability, should make early decisions about which potential adopters they take forward, with a view to targeting their resources on those people wishing to adopt, who are most likely to meet the needs of children waiting?”.*

154 adopters responded to the survey. Seventy percent said “Yes” to this question and Thirty percent “No”. Therefore, the majority agree with this practice.

## **10.0 All other implications**

10.1 There are no other known implications that require consideration.

## **11.0 Schedule of background papers**

11.1 There are no background papers.