

STATUTORY DIRECTION TO SANDWELL METROPOLITAN BOROUGH COUNCIL IN RELATION TO CHILDREN'S SERVICES UNDER SECTION 497A(4) and (4B) OF THE EDUCATION ACT 1996

WHEREAS:

1. In this Direction:

- a. "the 1996 Act" means the Education Act 1996;
- b. "the 2015 Ofsted report" means Ofsted's inspection report published 5 June 2015 following its inspection of the Authority carried out between 27 January and 19 February 2015;
- c. "the 2018 Ofsted report" means Ofsted's inspection report published 29 January 2018, following its inspection of the Authority carried out between 6 November 2017 and 30 November 2017;
- d. "the Authority" means Sandwell Metropolitan Borough Council;
- e. "the Collaboration Agreement" means the contract setting out the terms on which Wolverhampton City Council is to host the Regional Adoption Agency with effect from 1 April 2019 as entered into between Dudley Metropolitan Borough Council, the Authority, Walsall Metropolitan Borough Council and Wolverhampton City Council;
- f. "the Commissioner" means the Commissioner for Children's Services in Sandwell, appointed in order to secure the delivery and improvement of specified relevant functions pursuant to the First Direction;
- g. "the First Direction" means the Direction of 6 October 2016 issued by the Secretary of State to the Authority pursuant to section 497A(4B) of the Education Act 1996; following the 2015 Ofsted report;
- h. "the Regional Adoption Agency" means the agency known as Adoption @ Heart established as a collaboration between Dudley Metropolitan Borough Council, the Authority, Council, Walsall Metropolitan Borough Council and Wolverhampton City Council;
- i. "relevant functions" means those specified in Schedules 1, 2, 3 and 4 to this Third Direction;
- j. "the Second Direction" means the Direction of 23 March 2018 issued by the Secretary of State to the Authority pursuant to section 497A(4) and 497A(4B) of the Education Act 1996;
- k. "the Third Direction" means this direction;
- l. "the Trust" means the company limited by guarantee known as the Sandwell Children's Trust (registered company number 10620524), established pursuant to the First Direction;
- m. "Secretary of State" means the Secretary of State for Education; and
- n. "Services Agreement" means a contract setting out the terms on which the Trust is to perform specified relevant functions on behalf of the Authority, which is to be entered into by the Authority and the Trust pursuant to the Second Direction.

2. In issuing this Third Direction, the Secretary of State has considered:

- a. the arrangements to establish the Regional Adoption Agency pursuant to the Collaboration Agreement with effect from 1 April 2019; and
 - b. the amendments required to the Second Direction to enable the transfer back from the Trust of certain statutory functions and services to facilitate the Authority entering into the Collaboration Agreement to enable the operation of the Regional Adoption Agency.
3. Pursuant to the First Direction, the Secretary of State remains satisfied that the Authority is still failing to perform to an adequate standard, some or all of the functions to which section 497A of the 1996 Act is applied by section 50 of the Children Act 2004 ("children's social care functions"), namely:
 - a. social services functions, as defined in the Local Authority Social Services Act 1970, so far as those functions relate to children;
 - b. the functions conferred on the Authority under sections 23C to 24D of the Children Act 1989 (so far as not falling within paragraph a. above); and
 - c. the functions conferred on the Authority under section 10, of the Children Act 2004.
4. The Secretary of State had previously appointed Malcolm Newsam as the Commissioner, in accordance with, and for the purposes of, the terms of reference set out in the Annex to the First Direction.
5. In issuing the Second Direction, the Secretary of State acknowledged that he carefully considered:
 - a. The 2018 Ofsted report, which found again that children's services are inadequate. The sub-judgements for children who need help and protection, children looked after and requiring permanence, and leadership, management and governance were also 'inadequate'.
 - b. The 2015 Ofsted report, which found that children's services are 'inadequate'. The sub-judgements for children who need help and protection, and leadership, management and governance were also 'inadequate'; and
 - c. The Commissioner's report, of 4 July 2016, which highlighted the continued failure to achieve progress, which identified that the Authority is unlikely on its own to deliver the improvement needed, and which recommended that services are removed from the Authority's control for a period of time.
6. Pursuant to the Second Direction, the Authority established the Trust as a company limited by guarantee (company no 10620524), known as the Sandwell Children's Trust, which is responsible for discharging the Authority's children's

social care functions on its behalf in accordance with the terms of the Services Agreement entered into by the Authority and the Trust on 28 March 2018.

7. The Secretary of State remains satisfied and considers it expedient that in accordance with his powers under section 497A(4) and (4B) of the Education Act 1996, to direct the Authority as set out below in order to ensure that all of the Authority's children's social care functions are performed to an adequate standard.
8. The Secretary of State remains of the view that the most appropriate means of securing that the Authority's relevant functions, as specified in the Schedules to this Third Direction, are performed to the required standard is by:
 - a. the Trust continuing to exercise the specified relevant functions on behalf of the Authority; and
 - b. the transfer of some of these specified relevant functions back to the Authority to be discharged by the Regional Adoption Agency in accordance with the terms of the Collaboration Agreement.

NOW THEREFORE:

9. Pursuant to his powers under section 497A(4) and (4B) of the 1996 Act, the Secretary of State directs that the Authority shall do the following:
 - a. secure that:
 - (i) the children's social care functions set out in Schedule 1 to this Third Direction are performed by the Trust on behalf of the Authority;
 - (ii) the children's social care functions which are set out in Schedule 2 to this Third Direction are performed by the Regional Adoption Agency;
 - (iii) the children's social care functions which are set out in Schedule 3 are performed by the Trust and the Authority; and
 - (iv) the children's social care functions which are set out in Schedule 4 are performed by both the Trust (on behalf of the Authority) and the Regional Adoption Agency.
 - b. amend the Services Agreement with effect from 1 April 2019 to implement the discharge of the children's social care functions by the Trust in accordance with the terms of this Third Direction and comply with its terms from the date of entering into it;
 - c. comply with any instructions of the Secretary of State, or his representatives, in relation to:

- (i) ensuring that the Authority's children's social care functions are performed to an adequate standard;
 - (ii) terms of the Service Agreement that require the Secretary of State's consent;
 - (iii) the operation of this Third Direction;
- d. develop the Trust's improvement plan that will deliver appropriate and sustainable improvement. The plan should cover the areas identified in the Ofsted report of January 2018 as well as recommendations made through Ofsted monitoring visits.
- e. To ensure there is clear evidence of progression:
 - (i) the content of the improvement plan and a record of progress against it must be kept up to date on a monthly basis and submitted to the Department;
 - (ii) the Trust must ensure there is an improvement board with an independent chair in place to oversee implementation of the improvement plan and report to the improvement board on progress against the objectives in the plan, to a timetable agreed with the Department. It can commission updates from partners in order to do this;
 - (iii) reports to the improvement board should include data, analysis and recommendations supported by evidence of impact of improvements on the quality of practice and experience of children and families;
 - (iv) the Trust should highlight those objectives which are slow to progress and highlight where contributions need to be strengthened;
 - (v) the views of frontline staff and of children and young people will be taken into consideration in the development of practice and standards.

10. In this Third Direction, a reference to a function under a particular section, part or chapter of any primary legislation ("Act") includes:

- a. subsequent amendments, modifications, enactments or re-enactments to or of the particular section, part or chapter of that Act;

- b. schedules brought into force by virtue of the particular section, part or chapter of that Act; and
 - c. regulations or orders made under the particular section, part or chapter of that Act.
11. If a particular section, part or chapter of any Act is repealed, to any extent, then the function in question shall cease to apply and neither the Regional Adoption Agency, the Trust nor the Authority shall be required to perform that function (to the extent of the repeal).
12. If a particular section, part or chapter of any Act listed in the Schedules to this Third Direction is to come into force, then the function in question shall not apply, and neither the Regional Adoption Agency, the Trust nor the Authority shall be required to perform that function, until such time as, and to the extent that, the relevant provision enters into force.
13. The headings to the statutory provisions set out in the Schedules to this Third Direction in parentheses are for illustrative purposes only and do not form part of this Third Direction.
14. In consequence of this revised direction, the Secretary of State for Education revokes the Second Direction issued to the Council.
15. This Third Direction will remain in force until it is revoked by the Secretary of State.

Signed on behalf of the Secretary of State for Education

FIONA NZEGWU
A Senior Civil Servant in the Department for Education
JUNE 2019

SCHEDULE 1

RELEVANT FUNCTIONS TO BE PERFORMED BY THE TRUST ON BEHALF OF THE AUTHORITY FROM 1 April 2019

Functions under the Children and Young Persons Act 1933

Section 34 (Receipt of information in relation to the arrest and/or police detention of a child or young person for whom the Authority is providing accommodation).

Section 34A (Duty to attend court during all stages of proceedings in relation to a child or young person charged with an offence and who is in the care of or being accommodated by the Authority).

Functions under the Children and Young Persons Act 1969

Section 5 (Receipt of information in relation to the laying of information in relation to offences by young persons who reside in the Authority's area).

Section 9 (Duties in relation to investigating and providing such information about a young person resident in the Authority's area (e.g. home, school and health backgrounds) as the Authority feels will assist proceedings in courts where such a young person appears in connection with any offence).

Section 23B (Duty to prepare a report in relation to where a young person is to be placed on remand in accommodation provided or arranged by the Authority).

Section 26 (Duty to receive into care any person under the age of 18 years designated by the Secretary of State as subject to orders under authorities of, and on transfer into England from, the Channel Islands or Isle of Man).

Section 30 (Duty to detain a convicted young offender in a community home provided by the Authority in accordance with directions and instructions given by the Secretary of State).

Section 32 (Duty to receive and accommodate a young person who has been detained by a constable following absenteeism from accommodation provided by the Authority).

Schedule 3 (Functions in relation to the transfer of staff and liabilities of existing institutions to be used for the purposes of a community home provided by the Authority).

Functions under the Mental Health Act 1983

Section 116 (Duties in relation to arranging for visits to be made to, and other steps to be taken in relation to, a child or young person who has been admitted to a hospital or care home and who is in the care of the authority by virtue of a care order within the meaning of the Children Act 1989).

Functions under the Health and Social Services and Social Adjudication Act 1983

Section 17 (Powers in relation to charges for welfare services provided by the Authority).

Functions under the Children Act 1989

Section 7 (Duties in relation to providing reports on the welfare of children).

Section 9 (Duties with respect to restrictions on applying for child arrangement orders).

Section 14A (Duties with respect to special guardianship orders).

Section 14D (Power to apply to vary or discharge of a special guardianship order in respect of a child who is the subject of a care order in which the Authority is designated).

Section 14F (Duty with respect to assessment of and making arrangements for the provision of special guardianship services in the Authority's area).

Section 16 (Duty to make an officer of the Authority available to advise, assist and/or befriend any person named in a family assistance order where directed by the Family court).

Section 17 (Duties in relation to safeguarding and promoting the welfare and upbringing by their families of children in the Authority's area who are in need).

Sections 17ZA, 17ZB and 17ZC (Functions with respect to young carers' needs assessments).

Sections 17ZD, 17ZE and 17ZF (Functions with respect to parent carers' needs assessments).

Section 17ZG (Functions with respect to provision of section 17 services where EHC plan maintained).

Section 17A (Power to make direct payments as may be determined and as may be authorised by the appropriate national authority to a person with parental responsibility for a disabled child, a disabled person with parental responsibility for a child or a child aged 16 or 17 years).

Section 18 (Duties in relation to provision of day-care for specified children in the Authority's area).

Section 20 (Duties in relation to provision of accommodation for children in need in the Authority's area).

Section 21 (Duties in relation to provision of accommodation for children who are removed or kept away from home).

Section 22 (General duty in relation to children looked after by the Authority).

Section 22A (Duty to provide accommodation for children in the care of the Authority).

Section 22B (Duty to maintain, in other respects apart from provision of accommodation, children in the care of the Authority).

Section 22C (Duties in relation to making arrangements for accommodation and maintenance of children looked after by the Authority).

Section 22D (Duty, where the Authority is providing specified accommodation, to review a child's case before making arrangements for alternative accommodation).

Section 22E (Duty in relation to placing a child being looked after by the Authority in a children's home provided, equipped and maintained by an appropriate national authority).

Section 22G (General duty to secure sufficient accommodation for specified children being looked after by the Authority).

Section 23ZZA (Information and advice for promoting educational achievement).

Section 23ZA (Duty to ensure that specified children are visited by a representative of the Authority).

Section 23ZB (Duty to appoint an independent person to be a specified child's visitor where prescribed by regulations of the appropriate national authority or where it appears to the Authority to be in the child's interest to do so).

Section 23A (Power to prescribe additional categories of relevant children for purposes of duties under Section 23B of this Act).

Section 23B (Duties as to additional functions in respect of relevant children for whom the Authority is the responsible authority).

Section 23C (Duties continuing in relation to former relevant children).

Section 23CZA (Functions with respect to arrangements for certain former relevant children to continue to live with former foster parents).

Section 23CZB (England: further advice and support).

Section 23CA (Duties in relation to providing assistance to specified former relevant children to pursue education or training).

Section 23D (Duty to appoint a personal adviser for specified young persons as required by the appropriate national authority).

Section 23E (Duties and powers in relation to pathway plans for specified children).

Section 24 (General duties in relation to specified persons qualifying for advice and assistance).

Section 24A (Advice and assistance).

Section 24B (Power to give assistance to any specified person qualifying for assistance by virtue of section 24 by contributing to expenses incurred by that person in living near the place where he or she is or will be employed).

Section 24C (Duty to inform another local authority in whose area a specified person proposes to live or is living).

Section 24D (Duty to establish a procedure for considering representations from a relevant child or other specified person).

Section 25 (Duty not to place a child being looked after by the Authority in secure accommodation (i.e. accommodation provided for the purpose of restricting liberty), subject to specified conditions).

Sections 25A and 25B (Duty to appoint an individual, prescribed according to regulations, as an independent reviewing officer for the case of a child who is being looked after by the Authority) (and their functions).

Section 26 (Duties with respect to case reviews).

Section 26A (Duties in relation to making arrangements for the provision of assistance to persons making representations under sections 24D or 26 of this Act).

Section 29 (Power to recover from a specified person such charges for services other than advice, guidance or counselling as the Authority considers necessary, subject to conditions in this section).

Section 31 (Power to apply to the court for a care or supervision order in respect of a child who has not yet attained the age of 17 years (or 16 years where the child is married)).

Section 31A (Duties relating to preparation of a care plan for any child in respect of whom a care order application has been made).

Section 33 (Duty, in relation to any child in respect of whom a care order has been made, to receive into and keep in care the child for so long as the care order remains in force).

Section 34 (Duty, in respect of a child in the care of the Authority, to allow the child contact with the parents, guardian or any person with parental responsibility for the child, subject to provisions of this section).

Section 35 (Duties, in capacity as a supervisor of a child subject to a supervision order, in relation to the supervision order).

Section 37 (Duties, under direction of the court, in relation to undertaking investigations into the circumstances of a child welfare).

Section 39 (Power to apply to the court for discharge of a care order by which the Authority is designated).

Section 42 (Duties in relation to allowing access to an officer of the Service to records compiled in connection with the making or proposed making by any person of an application under this Act in respect of the child concerned).

Section 43 (Power to apply to the court for a child assessment order under specified conditions).

Section 44 (Functions in relation to emergency protection orders).

Section 46 (Functions in relation to receiving information from the police regarding the police removing a child into protection).

Section 47 (Duties in relation to investigating whether the Authority should take any action to safeguard or promote the welfare of any child in the Authority's area whom the Authority has been informed has been made the subject of an emergency protection order or is in police protection).

Section 50 (Functions with respect to recovery orders and the recovery of abducted children).

Section 52 (Functions with respect to rules and regulations made under this section).

Section 53 (Duties in relation to provision of the community homes for care and accommodation of children looked after by the Authority and for purposes connected with the welfare of children).

Section 55 (Power to refer to the Secretary of State for determination of any dispute arising in respect of a controlled community home).

Section 56 (Duty, pursuant to a notice from the Secretary of State, to conduct a controlled or assisted community home in the Authority's area where the provision of the home is ceased by a voluntary organisation).

Section 57 (Power to withdraw designation of a controlled or assisted community home).

Section 58 (Duty to receive compensation payable by the proprietor of a premises used for purposes of a controlled or assisted community home where provision of the home is ceased or the premises disposed of).

Section 62 (Duties in relation to ensuring safeguarding and promotion of welfare of children by voluntary organisations providing accommodation to the children in the Authority's area).

Section 67 (Duties in relation to ensuring promotion of welfare of children who are privately fostered in the Authority's area).

Section 68 (Powers in relation to giving of consent to a person to foster a child privately where he is otherwise disqualified from doing so by regulations made by the Secretary of State for the purposes of this section).

Section 69 (Power to prohibit private fostering by a person, subject to specified conditions).

Section 80 (Power to give or withhold consent to authorisation of an officer of the Authority by the Secretary of State to inspect children's homes).

Section 85 (Duty to receive notification in respect of children in the Authority's area accommodated by health authorities and local education authorities under specified conditions).

Section 86 (Duty to receive notification in respect of children in the Authority's area accommodated in care homes or independent hospitals under specified conditions).

Section 86A (Duties in relation to arranging for a child for which notification has been received under sections 85 or 86 of this Act to be visited by a representative of the Authority).

Section 100 (Duty to obtain leave of the court for any application for any exercise of the court's jurisdiction with respect to children).

Schedule 1 (Powers in relation to contributions to a child's maintenance under paragraph 15).

Schedule 2 (Duties in relation to providing support for children and families).

Schedule 3 (Parts 1 and 2 only: duties in relation to supervision orders).

Schedule 4 (Functions in relation to management and conduct of community homes).

Schedule 7 (Functions in relation to foster parents and the limit on the number of foster children).

Schedule 8 (Functions in relation to privately fostered children).

Functions under the Carers (Recognition and Services) Act 1995

Section 1 (Duty to assess the ability of carers to provide care).

Functions of the authority under the Adoption and Children Act 2002 in its capacity as an adoption agency

Section 1 (Duty to have regard for various specified matters when coming to a decision relating to adoption of a child).

Section 3 Duty to maintain an adoption service.

Section 7 (Duties to comply with, and powers under, directions of an appropriate Minister regarding inactive or defunct adoption societies).

Section 15 (Duties and powers in relation to inspections of premises in which a child who has been placed by an adoption agency is living).

Section 22 (Duty to apply to the courts for adoption placement orders).

Section 23 (Power to join with another Authority in application for variation of a placement order).

Section 24 (Power in relation to the revocation of placement orders).

Section 25 (Functions in relation to parental responsibility over a child authorised to be placed for adoption).

Section 26 (Powers in relation to making applications for contact orders regarding children placed for adoption).

Section 27 (Powers in relation to variation or compliance with contact orders).

Section 31 (Duty to return a child not placed or who is a baby within 7 days upon request of parents).

Section 32 (Duty to return a child placed for adoption within 14 days when parental consent is withdrawn).

Section 33 (Duty to return a child placed for adoption within time stipulated by the court when a placement order is refused).

Section 34 (Functions in relation to prohibition on removal of a child who has been placed).

Section 37 (Power to remove a child where adoption does not materialise).

Section 38 (Power to remove a child where the child has been placed with foster parents and adoption does not materialise).

Section 39 (Power to remove a child from a parent's partner where adoption does not materialise).

Section 40 (Power to remove a child in other circumstances where adoption does not materialise).

Section 42 (Duties in relation to preliminaries to adoption).

Section 43 (Duty to submit a court considering an adoption order a report on the suitability of the applicants for the adoption order).

Functions under the Children Act 2004

Section 9A (Duty in respect of safeguarding targets which may be set by the Secretary of State).

Functions under the Legal Aid, Sentencing and Punishment of Offenders Act 2012

Section 92 (Duties in relation to arranging or providing for a child remanded to local authority accommodation).

SCHEDULE 2

FUNCTIONS TO BE PERFORMED BY THE REGIONAL ADOPTION AGENCY FROM 1 APRIL 2019

Adoption and Children Act 2002

Section 3A (Functions in relation to recruitment, assessment and approval of prospective adopters).

Section 4 (Duty to carry out assessments of needs for adoption support services).

Section 4A (Functions in relation to adoption support services and personal budgets) – upon commencement of this provision.

Section 4B (Functions in relation to adoption support services and the provision of information).

Section 44 (Duties in relation to a notice of intended adoption).

Section 45 (Functions in relation to the suitability of adopters).

Section 51A and 51B (Functions in relation to post-adoption contact).

Section 54 (Duty to disclose prescribed information to prospective adopters).

Section 63 (Duty to comply with regulations regarding the availability and provision of counselling in relation to adoption).

Section 64 (Duty to comply with regulations making other provisions in relation to the adoption).

Section 125 (Functions in relation to the Adoption and Children Act Register).

Section 128 (Duty to comply with request for information prescribed by the Secretary of State for inclusion in the Adoption and Children Register compiled pursuant to Section 123 of this Act).

SCHEDULE 3

FUNCTIONS TO BE PERFORMED BY THE TRUST AND THE AUTHORITY FROM 1 APRIL 2019

Functions under the Health Services and Public Health Act 1968

Section 65 (Powers to give financial and other assistance to certain voluntary organisations).

Functions under the Children Act 1989

Section 27 (Duties and powers in relation to co-operation between specified authorities in exercising functions under Part 3 of this Act).

Functions under the Education Act 1996

Section 322 (Duty to comply with request for assistance for a local authority in carrying out its functions under Part 4 of this Act).

Functions under the Health and Social Care (Community Health and Standards) Act 2003

Section 114 (Duty to consider complaints in relation to discharge of any social services functions of the Authority).

Functions under the Children Act 2004

Section 10 (Duty to promote co-operation with various relevant partners and such other bodies as the Authority considers appropriate for the purpose of improving well-being of children in the Authority's area).

Sections 16A to 16D (Duties and powers in relation to child safeguarding practice review panels).

Sections 16E – 16L (Duties and powers in relation to identifying and reviewing serious child review cases).

Sections 16M – 16Q (Duties relating to the arrangements for the review of each death of a child normally resident in the area).

Functions under the Children and Social Work Act 2017

Section 2 (Local Offer for Care Leavers).

SCHEDULE 4

FUNCTIONS TO BE PERFORMED BY BOTH THE TRUST AND THE REGIONAL ADOPTION AGENCY FROM 1 APRIL 2019

Functions under Children Act 1989

Section 83 (Powers in relation to conducting, or assisting other persons conducting, research into specified matters in relation to adoption or accommodation of children in the Authority's area).

Functions under the Adoption (Intercountry Aspects) Act 1999

Sections 1 and 2(4) (Duties in relation to giving effect to the Convention on Protection of Children and Co-operation in respect of intercountry adoption).

Functions under the Adoption and Children Act 2002

Section 9 to 12 (Duties to comply with various Regulations made under this Act).

Section 13 (Duty to provide an appropriate Minister such information pertaining to adoption as is requested).

Section 14 (Duty to comply with such directions as appear to an appropriate Minister to be necessary for purposes of ensuring that any duties of the Authority pertaining to adoption are complied with).

Section 18 (Powers in relation to placement for adoption and adoption orders).

Section 19 (Powers in relation to placing children for adoption with parental consent).

Section 30 (Functions in relation to removal of children who have been placed for adoption).

Section 35 (Duties in relation to a child returned by the adopters).

Section 41 (Duties in relation to recovery orders made by the Courts).

Section 53 (Functions in relation to regulations modifying the Children Act 1989 in relation to adoption).

Section 56 (Duty to keep and/or disclose prescribed protected information in relation to a person's adoption).

Section 57 (Duties in relation to restriction of disclosure of protected information about a person's adoption).

Section 58 (Duty to keep and/or disclose prescribed other information in relation to a person's adoption).

Section 61 (Functions in relation to processing an application seeking protected information about the adoption of a person who has subsequently attained the age of 18 years).

Section 62 (Functions in relation to processing an application seeking protected information about the adoption of a person who has not yet attained the age of 18 years).

Section 79 (Functions in connection with the Adopted Children Register).

Section 83 (Duty to comply with regulations in relation to adoption of a child brought into the United Kingdom).

Section 94 (Powers in respect of certain reports about adoptions).

Section 98 (Duty to comply with regulations conferring functions in relation to disclosure of information regarding adoption).

Section 103 (Duty to give officers of the Service access to certain Authority records).

Section 129 (Functions in relation to the disclosure of information).

WITHDRAWN