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**Meeting of the Cabinet – 19<sup>th</sup> July 2017**

**Report of the Strategic Director People**

**Creation of a Regional Adoption Agency – Adoption@Heart**

**Purpose of Report**

1. This report presents the proposal to create a new Regional Adoption Agency (RAA) to be named *Adoption@Heart* by combining the adoption services for the local authority areas of Dudley MBC, Sandwell MBC, Walsall MBC and City of Wolverhampton Council. It shows how establishing a single agency will allow the four authorities to achieve a more efficient and effective use of resources and improve outcomes for children, adopters and others gaining from adoption services.
2. The purpose in requesting approval at this stage is to secure agreement that the RAA is established as a Local Authority Trading Company (LATC), constituted as a Community Interest Company (CIC) and a Company Limited by Shares (CLS).

**Background**

**Executive Summary**

3. This report presents the proposal to create a new Regional Adoption Agency (RAA) to be named *Adoption@Heart* through combining the adoption services for the local authority areas of Dudley MBC, Sandwell MBC, Walsall MBC and City of Wolverhampton Council. It describes how establishing a single agency will allow the four authorities to provide a more cohesive, efficient and effective use of resources and promote the development of practice to improve outcomes for children, adopters and others who gain from adoption services.
4. The Cabinet is recommended to approve proposals for the establishment of the RAA by July 2018, and further to agree that the RAA is established as a Local Authority Trading Company (LATC), an organisation wholly owned by the participating local authorities, and that such a company be constituted as a Community Interest Company (CIC) and a Company Limited by Shares (CLS).
5. The development of Regional Adoption Agencies (RAA) is part of a national programme and the government expects all local authorities to move to Regional Adoption Agencies by 2020. There is a risk to Local Authorities failing to join a

regional agency that central government could direct how their services would be delivered, whereas participation in the Department for Education's Regional Adoption Agency Programme project allows the Council to influence ways of working rather than having them imposed upon it.

6. The four Black Country authorities, Dudley, Sandwell, Walsall and Wolverhampton, have been accepted by Department for Education (DfE) as 'early adopters', which provides access to funding to cover the costs of setting up the new agency.
7. The provision of an adoption service is a statutory requirement and Section 15 of the *Education and Adoption Act 2016* enables the development of Regional Adoption Agencies. This will not absolve each local authority of its statutory responsibilities, but will allow for certain functions to be delegated to a regional adoption agency.
8. The design of the Adoption@Heart Agency will be led by a commitment both to excellent and innovative practice, and value for money. A number of benefits are anticipated, both because of the opportunities for total re-design of the service, and because of its larger scale. It is anticipated that the development of the Adoption@Heart RAA will produce service delivery efficiencies, improvements and benefits which are set out in the report.
9. Substantial project work has been undertaken since November 2015 to develop the new RAA. The project is required to provide progress reports to the DfE on milestone delivery. A risk register is maintained as part of regular project management practice with mitigating actions identified to ensure the likelihood and impact of risks is managed proactively.
10. The development of the RAA provides the opportunity to design a new service from top to bottom, led by our vision and commitment both to excellent and innovative practice, and value for money. Work undertaken to date has identified many areas of service innovation which will support the RAA to deliver the service efficiencies and improvements.
11. It is anticipated that appropriate current employees of the Local Authorities (LAs) will transfer to the new agency under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 to the regional adoption agency.
12. Funding for the new RAA will be largely provided by the partner local authorities. In Year 1, it is proposed that each local authority funds the RAA in proportion to their 2016/17 budget for relevant adoption services, ensuring that funding does not exceed each local authority's current spend. Work will continue to develop a demand based funding formula that is acceptable to all LAs and this will be introduced within the first two years of the RAA's operation.
13. It is recommended that the RAA is developed as an LATC. This follows a detailed appraisal of the delivery vehicle options informed by independent legal advice. The chief advantages are seen to be the opportunity for equal ownership and status for all participating authorities, with all LAs represented on the Board of

Directors, and greater opportunities to develop a culture and practices that focus purely around the needs of children and adopters. A new identity and brand distinct from the local authorities is seen to provide an excellent platform to engage adopters, build trust and innovate while maintaining effective connections with LA children services teams.

14. It is further recommended that the legal form of the LATC is a Community Interest Company Limited by Shares (CIC CLS). It will be important that the RAA not only operates for social impact, but that its structuring and branding makes this clear to the outside world. A legal form with an asset lock will be best to achieve this. In addition, the RAA needs to be a "body corporate that is not carried on for profit" in order for the LAs to delegate relevant care functions. Both these key requirements can be met through a CIC. CICs are a popular vehicle for social enterprises with a positive reputation as a self-sustaining organisation that exists to benefit the wider community. Constituting this as a Company Limited by Shares further enables the company to pay some financial returns to stakeholders if affordable, and raise third party capital (social investment) if required due to its ability to issue shares.

### **Government requirements**

15. The development of Regional Adoption Agencies (RAA) is part of the national regionalising adoption programme. The government set out their proposals to move to Regional Adoption Agencies by 2020 in '*Regionalising Adoption*' (July 2015), and invited expressions of interest from local partnerships to become 'early adopters'. That paper set out three aims for RAAs:

- To speed up matching and improve the life chances of neglected children
- To improve adopter recruitment and adoption support
- To reduce costs (through more timely placements for Children who are looked after)

16. Government plans were further developed in 'Adoption; A Vision for Change' (March 2016). The Department for Education (DfE) expects to see Voluntary Adoption Agencies and Adoption Support Agencies (collectively referred to as VAs) actively included in both the co-design and delivery of RAAs.

### **The Local Response**

17. The four Black Country authorities, Dudley, Sandwell, Walsall and Wolverhampton, working with VA Adoption Focus, and at the time Shropshire and Telford & Wrekin local authorities, responded in September 2015 to the DfE's call for expressions of interest to become 'early adopters'. DfE agreed funding to begin in November 2015.

18. There are a number of advantages to becoming an early adopter of the programme. In particular, since DfE have said that they expect all LAs to deliver their adoption services through an RAA by 2020, a proactive approach enables LAs to design a new agency themselves; ensuring that local needs are addressed and improved outcomes for local children are achieved at the earliest

opportunity. In addition, the LAs are active players in changing the national adoption landscape and have secured DfE funding to cover the costs of setting up the new agency.

19. Shropshire and Telford & Wrekin were actively engaged in the project until February 2017, when they concluded that being part of this RAA was not in their best interests due to funding concerns and uncertainty about the benefits for their rather different child population profile compared with that of the four Black Country authorities.
20. Sandwell Council is in principle committed to the development and implementation of a regional Adoption Agency covering the four Black Country Authorities of Dudley, Sandwell, Walsall and Wolverhampton. The details of this still need to be resolved. The formal adoption of this approach will need to be confirmed by the newly created Sandwell Children's Trust which will become operational in the latter part of 2017.
21. The four Black Country agencies have a long history of working together and have jointly operated a single 'front door' for prospective adopters since 2002 via ***Adoption in the Black Country*** (ABC). The ABC partnership has provided a solid foundation for this work, and historically has been recognised by external regulation as an area of good practice.

### **Benefits of a Regional Adoption Agency**

22. The design of the RAA will be led by a commitment both to excellent and innovative practice, and value for money. A number of benefits are anticipated, both because of the opportunities for total re-design of the service, and because of its larger scale:

#### **23. Anticipated Benefits – Efficiencies**

- Reduction in LA expenditure on fostering placements (including practitioner time)
- Unit cost reduction of adopter recruitment, family finding and support services
- Decreased use of inter- agency placements
- More children identified for adoption through improved permanence planning.

#### **24. Anticipated Benefits – Quality of Practice and Outcomes**

- Improved permanence planning for children
- Increased placement choice from a larger pool of adopters
- Reduction in the number of placement days from children entering care to being placed with their adoptive family
- Fewer children for whom their permanence plan changes away from adoption
- A wider range of support services for adoptive families, promoting stability and reducing disruption

- More adopters approved and swifter matching of adopters with children.

### **Project management and governance approach to establish the RAA**

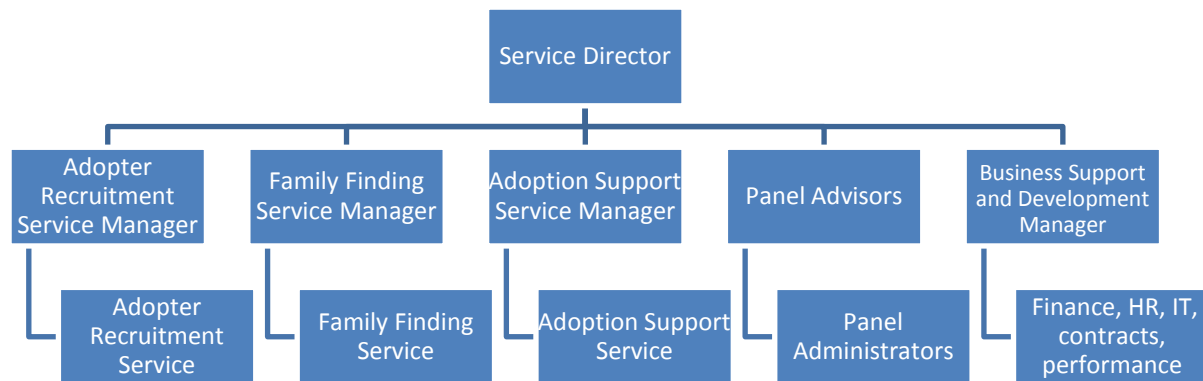
25. Substantial work has been undertaken since November 2015 to implement the new RAA which is planned to go live by July 2018. Funding of £274,551 has been claimed to 31<sup>st</sup> March 2017 from the DfE to support the project including project management, and independent specialist legal, financial and technical advice. The project is required to provide progress reports to the DfE, and subsequent phases of funding are contingent upon satisfactory progress.
26. Project organisation and governance arrangements are well established. The project is led by the City of Wolverhampton Council and the overall project sponsor is Dudley's Strategic Director People. A Project Manager is in place with responsibility for managing the project and the project management approach includes processes for risk management. There is active consultation with stakeholders including council elected members, adopters, and staff as proposals develop. A stakeholder engagement strategy is in place, VAs are actively involved, in line with DfE expectations and a Partnership Protocol, setting out the agreed ways of working together has been written. The project governance structure is presented in Appendix one.

### **Design of the new service and operating model**

27. The development of the RAA provides the opportunity to design a new service from top to bottom, and a whole range of new and innovative practice will enable the efficiencies and improvements outlined in 2.3 to be delivered. The RAA will deliver the following services:
- Support and challenge to child care teams in assessing children's needs and early identification of children for whom an adoption plan is suitable
  - Early Permanence Placements
  - Child preparation and life story work
  - Recruitment and approval of adopters including the Adoption Panel and decisions made by the Agency Decision Maker.
  - Purchase and sale of inter-agency placements to achieve the best match between children and adopters
  - Family finding and matching of children with adopters.
  - Matching Panel and Agency Decision Maker (ADM) decision on matches
  - Pre and post approval support for adoptive families
  - Birth Family support including contact with their children who have been adopted via the 'Letterbox' service
  - Support for adults who were adopted as children – access to records and counselling
  - A non agency adoption service
28. The service specification will set out the related responsibilities which will remain with the LAs (primarily those relating to the children) to ensure that the whole

system works effectively. A detailed list of respective responsibilities is presented in Appendix 2.

29. A 'Hub & Spoke' model is planned with a central hub helping to build the identity and culture of Adoption@Heart, whilst maintaining a local and accessible presence via 'spokes', keeping staff and service user travel time to a minimum. Practitioners will be equipped to work flexibly, making use of 'hot desk' arrangements in local authority office bases. The high level structure for the RAA is shown below.



*The organisational design of the RAA is shown in Appendix three*

### **Required productivity of RAA to meet local need for adoption services**

30. Modelling has been undertaken to determine the likely numbers of adoptive placements required from the RAA each year, based on 2015/16 and 2016/17 data.

- Just fewer than 140 children were placed for adoption by the 4 LAs in each year.
- A high proportion of placements were provided by another agency, thus incurring an inter-agency fee: 36.5% in 2015/16, and 59% in 2016/17. This is likely to be linked to usage of the DfE Inter Agency Fee grant (now ended).

This has informed the productivity projections and assumptions for the RAA:

- A modest increase in the number of placements during the first 3 years, then becoming stable. This is in line with the anticipated requirements of the 4 LAs.
- A gradually reducing proportion of placements incurring the Inter-Agency fee, stabilising at 20% from year 3 to ensure effective matching for every child.
- A modest increase in the number of placements found for children from other LAs (and so generating an Inter-Agency fee as income for the RAA).

	2018/19 (Year 1)		2019/20 (Year 2)		2020/21 (Year 3 onwards)	
Total children to be placed for adoption	150		155		160	
Placed by RAA	105	70%	116	75%	128	80%
Placements provided by another agency*	45	30%	39	25%	32	20%
Placements found for other children (income)	15		15		16	
Total placements 'made' by RAA	120		131		144	

\*Combination of RAAs, LAs and VAAs

### Arrangements with Voluntary Adoption Agencies

31. VAs will be involved in the co-design and delivery of the RAA, both as sub-contracted providers of identified services, and as contributors to the RAA's strategic direction through a non-voting role on the RAA Board. The RAA will procure a VA consortium to achieve this. In addition, we are working through the West Midlands Regional Adoption Board to establish a Regional Permanence Hub which will include a supplier framework from which providers of specialist adoption support can be accessed on a spot purchase basis to meet family need.

### Proposed delivery vehicle for the RAA and options appraisal

32. The RAA Project Board has undertaken an options appraisal of a range of possible delivery vehicles for the RAA. The models that have been considered are:

- Model 1 - A single LA hosting the RAA on behalf of the other LAs
- Model 2 - A Local Authority Trading Company (LATC) wholly owned by the LAs
- Model 3 - A Joint Venture between the LAs and VAs to create a new VA
- Model 4 - Outsourcing service delivery to an existing VA

33. Independent legal advice was obtained and presented to Directors of Children's Services, Project Board members and local authority legal services. A comparison of the likely running costs of Models 1 and 2 was also considered. This showed very little difference between the two models, with the only material difference being that the LATC model is likely to be subject to irrecoverable VAT on the purchase of non-welfare items (see section 4). The table below presents a summary of the options appraisal.

	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>	<b>Model 4</b>
<b>Ownership, governance and features</b>	<ul style="list-style-type: none"> <li>• One LA delivers the RAA on behalf of the other 3 LAs who do not have any ownership of the RAA. Control would be exercised through contracts between the LAs and they could share strategic decisions about service design and improvement, investment and savings.</li> <li>• VAs could be co-opted in, but would not hold a governance role.</li> <li>• Back office likely to be delivered by host LA's corporate services</li> </ul>	<ul style="list-style-type: none"> <li>• The RAA is established as a separate legal entity, with 100% ownership by the LAs. Each LA would be a member of the RAA and appoint a board member. They would have equal ownership, offering balanced control between LAs, compared to Model 1.</li> <li>• VAs can be represented as Non Executive Directors.</li> <li>• Back office likely to be directly delivered by RAA; delivery needs to ensure minimum VAT liability</li> </ul>	<ul style="list-style-type: none"> <li>• The RAA is established as a separate legal entity from the LAs, with ownership shared between the LAs and VA(s).</li> <li>• The RAA would be accountable to all owners. It would be possible to use the division of voting rights to determine the influence of different LAs or VAs.</li> <li>• The RAA would have regulatory scrutiny from either the Charity Commission or the CIC Regulator.</li> </ul>	<ul style="list-style-type: none"> <li>• The entire RAA is outsourced to an existing VA for them to deliver on behalf of the LAs via a procurement exercise. LAs would not own the RAA but would monitor the contract through a Joint Commissioning Board.</li> </ul>
<b>Benefits</b>	<ul style="list-style-type: none"> <li>• <b>Implementation:</b> Easier to implement as utilising existing infrastructure so lower service risk during transition.</li> <li>• <b>Procurement:</b> simple contractual arrangement between the LAs and the LA carrying out the RAA function.</li> <li>• <b>Running costs:</b> as for an LATC except that LAs are VAT registered so can recover VAT on non-welfare purchases</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Scrutiny and accountability</b> by LAs would be equal.</li> <li>• <b>Stability and sustainability:</b> Equal LA ownership means greater stability and shared risk. Greater potential to access charitable grants and social investment, especially through VAA partners.</li> <li>• <b>Flexibility:</b> More flexible as separate legal entity; mechanisms can allow LAs to join or leave; LATC could be used for other purposes later.</li> <li>• <b>Implementation:</b> Greater opportunity to re-design processes and structures to improve quality and outcomes.</li> <li>• <b>Procurement:</b> No procurement would be required as the Teckal</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Stability and sustainability:</b> All key stakeholders have a level of ownership with potential for a balanced structure and shared risk.</li> <li>• <b>Flexibility:</b> More flexible as a separate legal entity with a broad spread of ownership.</li> <li>• <b>Greater ability to raise finance</b> and a charity structure might offer greater opportunities for grant funding.</li> </ul>	<ul style="list-style-type: none"> <li>• VAAs have strong track record in this area</li> <li>• An existing VAA is a charity, and has an existing Board of Trustees.</li> </ul>



	Model 1	Model 2	Model 3	Model 4
		exemption allows LAs to contract with a body they own and control.		
<b>Risks</b>	<ul style="list-style-type: none"> <li>• <b>Scrutiny and accountability:</b> unequal role in governance between the LAs would need to be addressed through contractual agreements.</li> <li>• <b>Stability and sustainability:</b> Risks will need to be fairly allocated across LAs. Non-host LAs may feel less participation and commitment. Service is subject to priorities of host LA, which may create risks.</li> <li>• No opportunity to access social investment.</li> <li>• <b>Flexibility:</b> Difficult for RAA to run independently of the host LA in the event of difficulties; less scope for RAA to adapt its range of activities.</li> <li>• Limited potential for innovation; more likely to adopt processes of host rather than best practice of all partners and beyond.</li> <li>• <b>Staffing:</b> Host LA takes on the staff, LGPS obligations and statutory responsibilities. Alignment of pay scales more challenging as benchmarked to each LA's pay scales.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Running costs:</b> As for the hosted model except the LATC will not be VAT registered and so be unable to recover VAT on the purchase of non-welfare items, although a national change to these rules is being sought</li> <li>• <b>Staffing:</b> Uncertainty about Terms &amp; Conditions could create risks in recruiting social workers compared with an LA hosted model.</li> <li>• <b>Implementation:</b> More complex transition than LA hosted model.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Implementation:</b> more complex and costly to establish and operate.</li> <li>• The due diligence and transfer process will be a significant and resource intensive process.</li> <li>• Setting up the RAA as a charity will take longer and be more complicated than for a CIC.</li> <li>• The Teckal consideration would not apply as this structure would not be wholly owned by LAs.</li> <li>• The potential charitable advantages of this vehicle could be realised instead through partnership with VAs.</li> <li>• The VAs involved in the project did not wish to participate in this option. They wish to be involved in co-delivery and design of the RAA, whilst retaining the ability to deliver services in their own right. They perceive that model 2 better defines the relationship between the VAs with the RAA.</li> <li>• Other RAA projects are not adopting this model.</li> </ul>	<ul style="list-style-type: none"> <li>• Unlikely to be as cost effective as other options</li> <li>• Less flexible</li> <li>• Transfer issues more complex</li> <li>• Less favourable in terms of likelihood of achieving the desired outcomes.</li> <li>• Less control and influence by the LAs.</li> <li>• Staff in LAs may be nervous about moving to the voluntary sector</li> <li>• Other RAA projects are not adopting this model.</li> </ul>

34. In the light of this assessment, **the recommendation is that the RAA is developed as an LATC**. This option holds the following advantages and opportunities:

- A joint venture creates a new entity which offers a neutral platform, affords all participating authorities equal status within the arrangements and avoids the perception of control which the required role of a "lead authority" can create.
- The structure allows governance arrangements to be straightforward with all LAs represented on the Board of Directors, and VAs in a Non Executive Director role.
- It will be easier to establish a new identity and brand distinct from the local authorities, providing a better platform to engage adopters, build trust and innovate while maintaining effective connections with LA children services teams.
- Greater flexibility outside of the regulation of local government offers opportunities for innovation, growth and transformation of adoption delivery.
- A separate entity enables the development of a culture and practice that focuses purely around adoption and the needs of children and adopters.
- The creation of a new company owned by the local authorities offers future opportunities for further shared service delivery.

### **The legal form of the new company**

35. If the recommendation of an LATC is accepted, a legal form for the new company needs to be further agreed. An appraisal of the options (in terms of branding and identity, tax reliefs, use of surpluses and profits, liability and regulation), has concluded that one of the following legal forms will be the most appropriate:

- a community interest company (limited by guarantee);
- a community interest company (limited by shares);

36. Other legal forms have been discounted because they will not enable two key factors:

- The RAA needs not only to operate for social impact, but also for its structure and branding to make this clear to the outside world. A legal form with an asset lock will be best to achieve this.
- The RAA needs to be a "body corporate that is not carried on for profit" in order for the LAs to delegate relevant care functions as the corporate parent for children who are looked after.

37. The table below shows the other legal forms rejected, with the reasons:

<b>Forms</b>	<b>Reasons</b>
A charity	A company wholly owned by the LAs cannot register as a charity.
A company limited by shares	Although it is possible to build in an asset lock to a simple CLS, a CLS would not project the same message as the CIC label.
A charitable incorporated organisation	A company wholly owned by the LAs cannot register as a charity. Some legislation relating to LAs does not recognise CIOs as a suitable corporate form.
A limited liability partnership	These do not have an asset lock, which could be of concern to investors. The advantage of LLPs, that they are tax transparent, would not be a key consideration as the purpose of the RAA will be to deliver social impact. LLPs are also not eligible for social investment tax relief.

## **Rationale for forming the RAA as a Community Interest Company (CIC)**

38. CICs are a popular form of company specifically designed for social enterprise – sometimes called a ‘wrapper’. They have a positive reputation as self-sustaining organisations that exist to benefit the wider community. Key features of a CIC:

- The company must carry out activities for the benefit of the community
- CIC makes clear the company is not profit making and has a clear social purpose
- There is an asset lock
- It may be possible to attract some business rate relief
- A CIC has the ability to carry out its own trading activities
- There are lower levels of regulatory oversight allowing greater flexibility.

39. A CIC can be either limited by shares or by guarantee.

- With a company limited by guarantee, each member guarantees a sum to be put towards the company's finances if it is wound up. The company cannot issue shares, nor pay dividends to its members.
- With a company limited by shares, shareholders each hold shares in the company and liability is limited to the amount unpaid on shares they hold.

40. Key advantages of a CIC CLS here are the ability to:

- Pay some financial returns to LA members, if affordable, providing they have invested capital in the entity (in cash or in the form of asset transfers).
- Raise third party capital (social investment) due to ability to issue shares.
- Create different economic interests for stakeholders if needed.

41. In the light of the assessment above, **the recommendation is that the legal form of the LATC is a Community Interest Company Limited by Shares (CIC CLS).**

### **Proposed governance and accountability of the Regional Adoption Agency**

42. The RAA will be wholly owned by the participating LAs, with each LA having an equal share of ownership (25% each). They would be the Members of the organisation and would enter into a Members' Agreement. The anticipated governance arrangements of the RAA, via a Board of Directors, can be viewed in Appendix 4:

43. Day-to-day operational decisions will be taken by the RAA and strategic decisions referred to the Board of Directors which will be accountable for running the RAA.

### **The RAA Board of Directors**

44. LAs will have full ownership of the strategic direction of the RAA. To ensure this, each will have a Non Executive Director place on the Board of Directors, and will be the only members with voting rights. LA officers acting as directors will be offered training and support to carry out their duties effectively and in a way that promotes the success of the RAA for the benefit of its members as a whole.

45. The Adoption@Heart Service Director will be an Executive Director on the RAA Board (with no voting rights). They will advise and be held to account by the Board. Other RAA managers can be invited to attend as required.
46. The VA consortium will be offered a place on the Board in the capacity of Non Executive Director (non-voting member).
47. A further Non-Executive Director with valued expertise could be appointed if it becomes clear that there are knowledge or skills gaps on the Board as a whole.
48. All directors would be duty bound to act in the best interests of the company. Where conflicts arise, a declaration of interest protocol will be followed.

### **Stakeholder influence**

49. Mechanisms to enable key stakeholders to influence the RAA will be established:
- An Adopter Advisory group with the ability both to send papers up to the Board, and be tasked by the Board to give advice or attend board meetings.
  - A mechanism for the child's voice (adoptees) to engage with and contribute to the Board will be developed.
  - A staff forum to contribute staff views to the Board will also be considered.

### **Relationship with the LA Joint Commissioning Board**

50. In addition to sitting on the RAA's Board of Directors, the participating authorities will need to hold a commissioning relationship with the RAA. A Joint Commissioning Board, consisting of representation from each of the local authorities will be formed for this purpose, governed by an agreement between the commissioning authorities. It will be important to ensure there is an "ethical wall" between the Joint Commissioning Board and the RAA Board of Directors and that membership is different and appropriate to the respective roles of each Board. This will enable all members to act in the best interests of the function they are representing.
51. A Commissioning Agreement will then be entered into between the participating authorities and the RAA. The Joint Commissioning Board will monitor the delivery of this and the performance of the RAA. A Performance Monitoring Framework is being developed to monitor the performance of the RAA against the agreed contract. Other agreements will also be required, in particular around information sharing, both between the LAs and with the RAA in line with Data Protection and security.

## **Finance**

### **Set up and project costs**

52. The costs of setting up the RAA are being funded by the Department for Education as part of the support available to early adopters of the programme. It is not anticipated that any set up costs will be payable by the LAs although DfE are not able to cover the costs of marketing the new agency.

## **Developing the RAA Financial Model and Budget**

53. A five year budget for the RAA is under development, using a base budget approach and taking account of the required productivity to achieve the outcomes required. The budget will reflect some incremental increases in productivity and an inbuilt inflationary increase which will be accommodated by the RAA.

## **Delivering Efficiencies**

54. It is anticipated that there will be some efficiencies over the medium to long term arising from bringing the adoption services together into one agency. In particular, the strategy to reduce the historically high spends on interagency placement fees is a key part of the approach to achieving efficiencies. Savings are also anticipated through reduced LAC placement costs as children are placed for adoption more quickly. In addition, there are some non-cashable savings for the LAs, e.g. through adoption services ceasing to use the Council's corporate services, and through the release of office premises back to Councils.

## **VAT Implications of an LATC model**

55. Tax advice has identified that if the RAA were to be a separate legal entity from the LAs, the nature of its supplies and contracts with the local authorities would determine the VAT liability. HMRC see adoption agencies as providing solely VAT exempt 'care and welfare' activities. There are two consequences of this exemption:

- The RAA will not be required to charge VAT to the participating authorities in respect of the welfare services it provides.
- The RAA may not be able to recover the VAT it incurs in procuring support services from third parties. Examples here include venue hire, software licenses, printing, advertising, and any externally procured business support services.

56. Consequently, RAA support and back office services arrangements will be as VAT efficient as possible. The unavoidable payment of irrecoverable VAT will be factored into the RAA budget and is estimated to be in the region of £40,000 p.a. This must be flagged as a risk and an agreement to split this cost amongst the participating authorities must be actively considered.

57. Discussions are currently taking place at the national level to present a counter argument to HMRC that RAAs are providing a full management service on behalf of local authorities and that legal responsibility still lies with the local authorities, with OFSTED inspecting the RAA as agent of the local authorities rather than as an adoption agency. This will take time to agree and success is not guaranteed.

## **The Funding Agreement**

58. Funding for the new RAA will be largely provided by the partner local authorities. In the first two years of operation, each LA will contribute an amount equal to their budget for relevant adoption services. This will also enable year 1 contributions to be based on a direct transfer of current relevant resources.

59. Basing the funding on current budgets will become increasingly less significant as the RAA becomes established. As part of the commitment amongst partners to work collaboratively, a demand based formula will be agreed and used from year 3 (adjusted if necessary to accommodate significant differences from current contributions). This will ensure funding contributions from each local authority reflect differential use of the service.
60. Budget and service delivery performance will be regularly reported to member local authorities and reviewed with regard to local authority demand requirements. A Performance Management Framework is being developed which will form a key part of the contract monitoring arrangements between the LAs as commissioners, and the RAA delivering services on its behalf. In addition, arrangements will be developed for inclusion in the Members' Agreement, for dealing with any under spends and overspends, as well as the transfer arrangements.

## **Law**

### **Legal requirement to provide an adoption service**

61. The provision of an adoption service is a statutory requirement and the Council is required to monitor the provision of adoption services. The Adoption and Children Act 2002 provides the structure for this and under section 3 of the Act, each Council must continue to maintain within its area an adoption service designed to meet the needs of children who may be adopted, their parents, natural parents and former guardians. These services are referred to as the 'adoption service', meaning either a local authority or a registered adoption society may be referred to as an adoption agency (section 2(1) of the Adoption and Children Act 2002).
62. The development of an RAA will not absolve each local authority of its statutory responsibilities, but will allow for certain functions to be delegated to facilitate the operation of a regional adoption agency. Legal Services representatives from the four local authorities are developing the legal framework for the RAA.
63. Section 15 of the Education and Adoption Act 2016 enables the development of Regional Adoption Agencies by amending the Adoption and Children Act 2002 to include joint arrangements by one or more local authorities for all or any of their functions to be carried out on their behalf by either a) one of those authorities; or b) one or more other adoption agencies.
64. Each local authority will continue to be registered as an adoption agency as it will retain the Agency Decision Maker (ADM) responsibility for the child along with its care planning responsibilities. ADM for adopter approval and matching will sit with the RAA. The RAA will have its own Unique Registration Number and satisfy Ofsted requirements.

### **Procurement of the RAA and governance considerations**

65. No procurement of the RAA will be required as the LAs will take advantage of Regulation 12 of the Public Contract Regulations 2015, which allows one or more LAs to contract with a body they own and control without undertaking an EU compliant procurement. Supporting services will be procured (sub-contracted) by the RAA itself under the Lighter Touch Regime, and below the €750k threshold.

66. Each of the participating authorities will commission services from the RAA, and a Joint Commissioning Board, consisting of representation from each of the local authorities will be formed for this purpose, governed by an agreement between the commissioning authorities. The RAA will then be directly accountable through a contract with the LA Joint Commissioning Board for delivering adoption services.

### **Human resources implications**

67. Appropriate current employees of the LAs will transfer to the new agency under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014. HR advisers from all local authorities are working closely together to consider the implications for staff transfer and pensions. Pension indemnity costs have been accounted for from set up funding provided by the Department for Education.

68. All partners will carry out their responsibilities with regards to the legal requirements. This will include exchange of information on the impact of the transfer on affected staff, and any measures being proposed by the new agency. A due diligence review of the numbers, roles and Terms & Conditions (T&Cs) which currently apply to employees will be undertaken to identify what T&Cs the RAA would inherit on a TUPE transfer. The RAA will consider how the variety of terms would fit in with its structure of T&Cs and identify any potential issues or conflicts. A formal consultation process with all affected staff and recognised Trade Unions will be undertaken by all the partner employer(s) for all staff affected by the transfer.

69. Appropriate 'pension protection' will need to be provided for employees transferring under TUPE from the LAs to the RAA. Discussions will take place with the West Midlands LGPS Pension Fund, of which all 4 LAs are members, regarding the RAA also participating in the LGPS to allow the transferring employees to continue with their membership, or entitlement to join following the transfer. Next steps include a Pension Actuarial Assessment, considering TUPE implications, staff consultation, and the Due Diligence process for policies and procedures. Consideration will be given as to pension arrangements for future staff employed by the RAA.

### **Equality Impact**

70. This proposal has equal opportunity implications as the development of an RAA has direct implications for looked after children with a plan for adoption. Actions included in this report target support for the most vulnerable children and therefore will have a positive impact on equalities. Research and data analysis has been undertaken to identify and agree actions to address potential equality impacts for service users and staff, and the project will continue to explore and address equality impacts. The data analysis includes results by protected characteristics to ensure that the actions outlined in this report are targeted to those areas that require it the most. The Equalities Assessment, undertaken by City of Wolverhampton Council, is at Appendix 5.

## **Recommendations**

71. It is recommended that the Cabinet:

- i. Approve proposals for the establishment of the Adoption@Heart Regional Adoption Agency (RAA) as outlined in this report
- ii. Agree that the RAA is established as a Local Authority Trading Company (LATC), an organisation wholly owned by the participating local authorities
- iii. Further agree that such a company be constituted as a Community Interest Company (CIC) and a Company Limited by Shares (CLS).
- iv. Agree to consider a further report in October 2017 that presents the full details of the LATC, including costings.



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## **Appendices**

Appendix 1: Services to be delivered by the RAA

Appendix 2: Adoption@Heart Governance including Board of Directors.

## **Background Papers**

Adoption at Heart Governance Structure

Service Delivery Model

Equalities Assessment