

**TITLE OF REPORT:** Overview of the Regional Adoption Agency development

**REPORT OF:** Sheena Ramsey, Chief Executive

---

### **Purpose of the Report**

1. To request endorsement of the outline proposals for the continued development of the Adopt NE Regional Adoption Agency (RAA). To endorse the preferred business model option for Adopt NE in the form of a Local Authority owned Joint Venture. To note a full business case will be presented for consideration to Cabinet by the end of 2017.

### **Background**

2. The development of Regional Adoption Agency proposals is part of the national adoption agenda set out in the DfE paper 'Regionalising Adoption' in June 2015. This was further developed in 'Adoption; A Vision for Change' in March 2016.

### **Proposal**

3. The Adopt NE Project Board, supported by DfE appointed project mentors, has agreed the following vision and high level objectives:

#### **Our vision:**

- Excellent adoption services that transform children's and families' lives for the better.

#### **Our objectives:**

- We place all children in a timely way in high quality, successful, life-long adoptive placements which meet all of their needs.
  - Families and prospective adopters receive a high quality experience no matter where they live.
  - Adoptive children and families receive the support they need for as long as they need it.
  - Our skilled and dedicated staff are proud to work for the service.
  - We achieve our objectives by working together in a spirit of collaboration, openness and co-production.
4. A Project Board has been established to carry out an options appraisal on a number of potential delivery models for regionalised adoption services. The board includes representation from all 5 local authorities and the 4 Voluntary Adoption Agencies (VAAs). There are 5 potential delivery models, which the DfE asked the Board to consider.

5. All Local Authority and VAA members of the Project Board met in October 2016 to consider all five RAA joint venture model options and recommended Option 2 due to the strengths of and balance of local authority ownership.
6. The main strength of this option is the necessary degree of control and management of risk for participating LAs whilst maintaining the flexibility to innovate and commission activity from VAAs. The procurement position is more favourable as certain exemptions are afforded if the RAA is Local Authority controlled and the essential part of the RAA activity is with the controlling Local Authorities.
7. **Option 2: Joint Venture between LAs**
  - RAA jointly owned by each LA partner
  - LA staff TUPE transfer or seconded
  - Using Teckal exemption LAs could contract with the new LA trading company (LATC) to provide specified adoption services without procurement exercise
  - Governance arrangements must be constructed so that the LAs can each 'control' the RAA in order to pass Teckal exemption test
  - VAA cannot be an owner –procurement and tax rules mean it must be owned by one or more Local authorities
  - VAAs could be involved in governance in a 'non-executive' capacity
  - Model could sub contract services from VAA/providers.
8. On 15 November 2016, a meeting of the project team, including some Lead Members from the LAs and DCSs from our five local authority stakeholders met and agreed to pursue, subject to formal partner agreement, a business solution involving the formation of a local authority owned joint venture recommending (option 2).

## **Recommendations**

9. Cabinet is recommended to:
  - (i) Endorse the outline proposals for the continued development of the Adopt NE Regional Adoption Agency (RAA).
  - (ii) Endorse the preferred business model option for Adopt NE in the form of a Local Authority owned Joint Venture.
  - (iii) Note a full business case will be the subject of a further report to Cabinet before the end of 2017.

For the following reason:

In order to agree the direction of travel for the adoption service and to progress the proposal of the joint venture RAA into a full business case.

### Policy Context

1. The Adopt NE proposal meets the requirements placed upon the Council to develop a new form of service to deliver statutory adoption functions. The preferred model secures best outcomes for children, prospective adoptive families and enables the Council to ensure that its excellent record and reputation in relation to adoption is secured into the future.

### Background

2. The development of Regional Adoption Agency proposals is part of the national adoption agenda set out in the DfE paper 'Regionalising Adoption' in June 2015. This was further developed in 'Adoption; A Vision for Change' in March 2016. The Government sought to address a number of challenges in adoption which they described as follows:
  - **Inefficiencies in the delivery of adoption services in England:** there are many adoption agencies (LAs and VAAs) chasing a limited market and not utilising economies of scale. In 2015 there were over 180 different adoption agencies, which dealt with around 5000 adopted children.
  - **Matching of children:** To reduce further the waiting time of hard to place children. In 2015 around 3000 children nationally with adoption placement orders were still waiting for 'forever families', despite there being enough approved adopters across the country.
  - **Recruitment concerns:** increase the capacity of the number of adopters who could take children with complex needs.
  - **Adoption Support challenges:** To strengthen further adoption support purchasing regional provision of high enough quality to support the long term needs of adoptive families.
3. In order to address these challenges, the government suggested a coming together of networks (mainly geographical) of local authorities (LAs) and Voluntary Adoption Agencies (VAAs) to form regionalised adoption services, utilising economies of scale, mutual learning and expertise from the VAA sector.
4. The government has signalled a clear intention that by the end of this parliament all local authorities will be part of regional agencies. The Education and Adoption Act 2016 makes provision for the government to direct a local authority to have its adoption functions carried out on its behalf by another authority or adoption agency where such provision has not been made.
5. At this stage the DfE is not prescriptive about what these adoption agencies should look like, other than that they must involve the voluntary sector in all aspects of the planning stage and the final delivery model, and should be more than simple consortium arrangements. Radical design solutions are being actively encouraged. To date, DfE has accepted expressions of interest over 80% of England's local authorities and over 95% of England's VAAs.
6. In November 2015, an expression of interest was submitted on behalf of Gateshead, Newcastle, Northumberland, North Tyneside and 4 voluntary adoption

agencies - After Adoption, Barnardo's, ARC NE and Durham Family Welfare (DFW). The proposal was approved by DfE as a "scope and define" project. South Tyneside Council has subsequently joined the project.

### **Consultation**

7. The Cabinet Members for Children and Young People have been consulted.

### **Alternative Options**

8. A Project Board has been established to carry out an options appraisal on a number of potential delivery models for regionalised adoption services. The board includes representation from all 5 local authorities and the 4 VAAs.
9. The potential delivery models, which the DfE asked the Board to consider, are summarised below.

#### **Option 1: a single LA hosting on behalf of a number of LA's**

- One LA hosts the RAA on behalf of the other partners
- LA staff TUPE transferred or seconded
- Would be run like a shared service by the host
- The LA's could commission the RAA directly without the need to tender, but only if the governance and control was shared between all LA's – Teckal exemption, legal advice required on governance
- A joint commissioning board could be established or the LA's could commission separately
- Model could sub-contract services from VAA/providers.

#### **Option 2: Joint Venture between LA's**

- RAA jointly owned by each LA partner
- LA staff TUPE transfer or seconded
- Using Teckal exemption LA's could contract with the new LA trading company (LATC) to provide specified adoption services without procurement exercise
- Governance arrangements must be constructed so that the LA's can each 'control' the RAA in order to pass Teckal exemption test
- VAA cannot be an owner – procurement and tax rules mean it must be fully owned by one or more LA's
- VAA's could be involved in governance in a 'non-executive' capacity
- Model could sub contract services from VAA/providers.

#### **Option 3: Joint Venture between VAA's and LA's**

- New organization cannot make a profit, therefore must be either a charity or have very clear provisions regarding profit in its constitutional documents.
- If it is jointly owned, ideally LA and VAA staff TUPE transferred or seconded
- Degree of LA control is variable depending on ownership shares
- If there is external ownership, procurement rules may have an impact e.g. LA's may have to openly tender for external partners
- Great potential for innovation in services, flexibilities that come from being an independent organization
- Model could sub-contract services from other VAA's/providers.

#### **Option 4: Commissioning RAA (CVVA proposed model also considered in addition to DfE options)**

- This model is based around the principle of commissioner/provider split where a group of LA's commission an RAA entity which handles family finding, matching and adopter support but does not recruit adopters
- Adopters are recruited into an adopter pool by the LA's and VAA's
- A key feature is that the family finding and matching process carried out by the RAA is 'blind' so decisions are not influenced by which LA or VAA recruits an adopter
- The RAA can be a Joint Venture (JV) between the LA's or a JV which also has VAA ownership – this would probably mean a procurement exercise would be necessary
- Regardless of ownership the VAA's would be involved in governance and decision making, possibly in a 'non-exec role)
- LA staff may transfer to the RAA to deliver family finding, matching and support services – but the RAA could also commission most services back from the LA's and the VAA's (and therefore be very thin)
- No VAA staff would TUPE transfer.

#### **Option 5: Outsourcing to existing VAA**

- The VAA would own the new RAA
- Staff (LA and VAA) possibly TUPE transferred or seconded
- A Board of Directors or Board of Trustees (for a charity) would be established – could take LA representatives
- LA's would commission the VAA to deliver the RAA – procurement rules will have an impact
- Risks/challenges around potential required working capital/upfront investment
- Model could sub-contract services from other VAA's/providers.

Other key issues underpinning this recommendation were:

- Option 1 may not offer the potential for innovation that other models can deliver and none of the partner LA's were willing to host the RAA
- Option 3 cost implications involved in shared ownership were not considered advantageous
- Option 4. This model was not considered to have potential efficiencies, however, the principle of 'blind matching' could be considered as part of other models
- Option 5. This delivery model had a number of potential risks including in relation to affordability and accountability, as staff would be required to transfer out of the Local Authority. None of Adopt NE partner VAA's were advocating this model.

#### **Implications of Recommended Option**

##### **10. Resources:**

- a) Financial Implications** - The Strategic Director, Corporate Resources confirms that there are no financial implications as a result of this report. At this stage work on the project is being funded by a grant from the DfE, with a small amount of work provided in kind by each Local Authority. Funding has been agreed from the DfE until end of March 2018.

**b) Legal Implications** - The provision of an adoption service is a statutory requirement and the Council is required to monitor the provision of adoption services. Pursuant to s.3 Adoption and Children Act 2002, 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.

Under the Education and Adoption Act 2016 councils' adoption services can be compelled by the Secretary of State to be part of a RAA. Although the setting up of a RAA is not mandatory at this point, the Secretary of State has indicated an intention to do this for all councils by 2020. The development of a RAA will not absolve the Council of its statutory responsibilities, but will allow for certain functions to be delegated to facilitate the operation of a regional adoption agency model.

The power to undertake the regionalisation of adoption services is contained in s.15 Education and Adoption Act 2016.

As referred to in option 2, the preferred business model option for Adopt NE in the form of a Local Authority owned Joint Venture. Legal advice was commissioned from external solicitors to provide a number of potential options for the legal structure of the JV. A paper was produced setting out the following options:

- Company limited by Shares (CLS)
- Company limited by Guarantee (CLG)
- Community Interest Company (Limited by Shares)
- Community Interest Company (Limited by Guarantee)
- Community Benefit Society (CBS)
- Charity (Company Limited by Guarantee)
- Charity (Charitable Incorporated Organisation)

When considering the most appropriate vehicle governance, funding, staffing, asset transfer/ownership and procurement were all addressed and consideration was given to the role of the VAA, tax implications and exit capability.

The outcome of the exercise was a clear recommendation for a Company Limited by Guarantee (CLG). This is a flexible structure, although there are funding restrictions. All the other options were dismissed apart from the Community Benefit Society, however the CLG was favoured on the basis the process for creating the legal entity is less onerous and time consuming. The recommendation will be considered by the Project Board of the RAA on 27 April 2017 and a final decision will be taken at that board meeting.

The formulation of this legal entity will be developed over the coming months with the assistance of external legal advice. The important factors to consider on behalf of Gateshead Council are to ensure the governance of the CLG allows for equal decision-making and control by each of the five participating LA and limiting the decision-making powers of the four participating VAA to ensure the Teckal exemptions are preserved. This will preserve the ability to directly award contracts to the RAA and for the RAA to directly award contracts to the participating authorities.

The JV will be constituted as an adoption agency bringing it within the terms of s.3(1) Adoption & Children Act 2002, thus allowing Adopt NE to legally place children for adoption pursuant to s.92 Adoption & Children Act 2002; although there remains unresolved issues surrounding Ofsted approval and continuing statutory obligations.

Due consideration has been given to the legal implications through the Legal Work Stream Group, made up of legal representatives from each of the five LA, both in terms of the legal structure of the JV as well the legal implications of the RAA placing the children for adoption.

**c) Human Resources Implications** – Initial work has been carried out to identify staff who are in scope and informal consultation has commenced with both employees and the relevant Trade Unions. If Cabinet is to approve the transfer of staff, formal consultation will commence under TUPE regulations to ensure the preservation of staffs current terms and conditions.

**d) Property Implications** - The geographical location will be considered as part of the business plan development.

11. **Risk Management Implication** - A full Risk Assessment of all financial, legal, human resource and operational delivery issues will be undertaken as part of the next stage of the project and reported back to Cabinet in Autumn 2016. This Risk Assessment will be fully compliant with the Council's decision making risk management guidance.

A risk register will be maintained as part of regular project management practice with mitigating actions identified to ensure the likelihood and impact of risks is managed proactively. An interim assessment of key risks is set out below.

**Risk 1:** Disruption during the period of transition and managers/staff becoming focussed on the change process rather than service delivery may lead to delays in plans for children.

**Mitigation:** Thorough and effective transition planning agreed with service managers and flexibility to enable service delivery priorities to be managed. Plans in place to reduce the workload on adoption managers and staff, thereby enabling them to maintain direct service provision. Early appointment of a Chief Officer to the RAA will support transition planning.

**Risk 2:** Adopters and adoptive children may lose confidence during the change process resulting in the potential for fractured relationships and breakdown in service delivery

**Mitigation:** Communications planning and involvement of adopters and adoptive children and young people throughout the process. Service monitoring during transition to ensure no impact on service delivery.

**Risk 3:** ICT system change may impact on service information, governance and records. Potential impacts include loss of personal information, delays in processes, safeguarding risk and cost of information security failures, undermining confidence in the new service and reputational damage.

**Mitigation:** ICT lead officers involvement and collaboration in planning and developing appropriate solutions. Detailed information gathering and analysis prior to service implementation will reduce potential confusion and error.

**Risk 4:** Potential for fragmentation and loss of good working relationships with child care teams in authorities, and disrupted links with health, education and other services.

**Mitigation:** Engagement of child care teams in the project and specific input into service specification and process changes to ensure links are maintained. Engagement with all partner agencies, service providers and ensuring robust systems are in place to maintain ongoing relationships into the future.

**Risk 5:** Set up and running costs may be underestimated leading to unforeseen liabilities for partners and/or the new RAA.

**Mitigation:** Financial analysis and modeling involving expert advice is included in the financial and transition plans. Sufficient time will be allocated to these activities and engagement of all partners in agreeing proposals to ensure estimates are understood by all and are as accurate as possible.

12. **Equality and Diversity Implications** - It is anticipated that Cabinet will consider the full business case before the end of 2017. Until Cabinet approves this, from the perspective of the Regional Adoption Agency (Adopt NE), there will be no changes in the current day to day delivery of Gateshead adoption services. We anticipate that the business case will have an overall positive impact upon children and young people, prospective adopters, adopters, staff, the council and stakeholders whom we work with and support.

A full and detailed impact assessment will be undertaken as part of the submission of the full business case to Cabinet.

14. **Crime and Disorder Implications** –There are no implications
15. **Health Implications** – The development work has consulted with Health services and will continue to work in partnership in shaping the service offer.
16. **Sustainability Implications** - The development of a full business case will focus on all sustainability issues.
17. **Human Rights Implications** - No issues
18. **Area and Ward Implications** - No issues