

CABINET	DATE 22.09.2021	ITEM NO 9
TITLE Regional Adoption Arrangements	WARD (S) All	
CHIEF OFFICER Director for Children's Services	CABINET MEMBER Cabinet Member for Children and Young People	
DECISION CLASSIFICATION Key Decision Non-Exempt Report	IS THE FINAL DECISION ON THE RECOMMENDATIONS IN THIS REPORT TO BE MADE AT THIS MEETING? Yes	

I. Decision required

This report makes the following recommendations to the decision-maker:

- I.1 To agree for Royal Borough of Greenwich (RBG) to join Adopt London South (ALS) Regional Adoption Agency (RAA) hosted by London Borough of Southwark (LBS) within the earliest possible timescale.
- I.2 For the duration of the partnership agreement referred to in I.3 below, to delegate to LBS (as host of ALS) four of the statutory and legal functions relating to adoption services set out in Section 3ZA(3) of the Adoption and Children Act 2002 as follows:
- a. the recruitment of persons as prospective adopters;
 - b. the assessment of prospective adopters' suitability to adopt a child;
 - c. the approval of prospective adopters as suitable to adopt a child;
 - d. the provision of adoption support services.
- I.3 To delegate to the Director of Children's Services in consultation with the Director of Finance and the Director of Legal Services, the authority to complete any required partnership agreement and other associated agreements in respect of RBG joining ALS.
- I.4 Delegate to the Director of Children's Services the authority to consult with members of staff affected by decisions arising from I.1 to I.2 above, and the Trade Unions (TUs), in respect of transfer of employees under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006.

2 Links to the Royal Borough of Greenwich high level objectives

2.1 This report relates to the Council's high level-objective as follows: -

- to support vulnerable children and young people.

3 Purpose of Report and Executive Summary

3.1 This report sets out the background to the Regional Adoption Arrangements and summarises RBG's efforts towards achieving the Department for Education's (DfE's) mandate for all local authorities in England to join a RAA.

3.2 The report also sets out a new proposal for achieving the government's mandate in relation to joining a RAA following an earlier Cabinet decision made on 22 June 2020, by recommending a partnership arrangement with nine other London local authorities under the ALS RAA hosted by LBS.

4 Introduction and Background

4.1 In June 2015, the DfE published its proposal to reform the adoption system in England and move to a regionalised approach in a paper titled, "*Regionalising Adoption*". This was following previous governments' findings on the challenges associated with recruitment of adopters and the need for a more streamlined system where fewer organisations operate at a much greater scale to recruit and assess adopters. The purpose was to speed up recruitment of adopters and the matching process, and markedly improve the life chances of neglected and damaged children, whilst also reducing associated costs.

4.2 In March 2016, the DfE published details of its vision as set out in "*Adoption: A Vision for Change*", where it introduced the concept of Regional Adoption Agencies (RAAs) and the ambition for all local authorities to be part of one by the end of the then Parliament, in 2020. This was to enable the adoption system to operate across boundaries, create a larger adoption pool and maximise the choice for children with Voluntary Adoption Agencies at its heart by April 2020.

4.3 The above vision was put into law through the enactment of the Education and Adoption Act 2016, which came into force on 7 March 2018. This gave the Secretary of State for Education (SoS) the powers to direct local authorities in England to enter into regional adoption arrangements. The SoS then mandated all local authorities to enter into a regional adoption arrangement by April 2020, but due to the impact of the coronavirus pandemic and the challenges faced by many local authorities in finding a

suitable RAA, the DfE had been flexible in the approach to ensuring compliance with the mandate. As such, there was an expectation that those local authorities yet to join a RAA should be able to achieve the mandate by April 2021.

- 4.4 In 2018, RBG commenced its due-diligence on the most suitable arrangement for meeting the DfE's mandate. A number of options were considered to determine the very best model for RBG's children, future adopters and staff and to mitigate potential risks.
- 4.5 An approach was made to Adopt East, hosted by Essex, where it was believed that a "light touch" RAA was being considered for the local authorities involved. Adopt East were not forthcoming on specific details on their arrangement and they were clear at the time on not seeking to expand their RAA to include other local authorities. As a result, this option was discounted.
- 4.6 A "splinter RAA" with close neighbours was also considered with informal discussions with Lewisham, which did not progress due to Lewisham's decision to be part of ALS RAA.
- 4.7 Bexley, Kent and Medway who were also in the process of forming a RAA now known as Adoption Partnership Southeast, were also engaged in a discussion but similar to Adopt East, they were not seeking to expand their RAA until it was fully established.
- 4.8 Further, an option to join the ALS RAA, hosted by LBS was explored. Due to our reservations on the early development of the operational model, coupled with the tight timescales for its implementation, a proposal was made to ALS for a special arrangement for RBG. The proposal would have enabled RBG to remain involved in shaping the development of the operational model whilst preserving our local arrangements to achieving permanence for children until the model was fully developed. The Council's proposal was not accepted by ALS, but an in-principle agreement was made for RBG's full commitment to ALS to be deferred for up to a year whilst other RAA options were explored.
- 4.9 On 28th December 2018, the Director of Children's Services notified the DfE of RBG's intention to maintain its relationship with Southwark as the host for the ALS RAA, in effect maintaining the in-principle commitment, but to explore other options in parallel.
- 4.10 The option to join Ambitious for Adoption (AfA), which is a RAA run by Coram (a voluntary organisation and the largest voluntary adoption agency in

the UK working with a number of other local authorities, mainly in London) and led by the London Borough of Harrow, was then thoroughly pursued because it appeared under the circumstances at the time to be the best available option. This was due to AfA's hub-spoke delivery approach, which placed quality of practice at the heart of the delivery model. Here, services were to be provided from each partner agency's location to facilitate local links, relationships, continuity and locality delivery and ease of access to services. On this basis, a recommendation was made to Cabinet for RBG to join AfA, and this was agreed on 22 June 2020.

- 4.11 All necessary due-diligence activities were undertaken that would have allowed our smooth transition to AfA, including setting up of a Strategic Project Board chaired by the Director of Children's Services, to facilitate partnership working between Coram and RBG leading up to RBG's admission. An internal operational Task and Finish Group was also set up to manage the required internal liaison and governance arrangement while a regime of continuous engagement with affected staff and TUs was established, including a meaningful consultation process as required under the TUPE regulations. A transfer date of 1 April 2021 was ultimately set whilst discussions continued with AfA to finalise the modalities of RBG becoming a partner in the RAA by the agreed date.
- 4.12 Despite all best endeavours, it became clear that parties were unable to agree due to differences on the following issues:
- a) Consideration of some key employee terms and conditions within the remit of the TUPE regulations, for the purpose of transfer of employees to Coram;
 - b) Clarity on the length of the partnership contract; and
 - c) Clarity on the management of spot purchasing of adopters during the transitional period.
- 4.13 Without the above differences between parties being resolved, officers were unable to justify proceeding with the process to join AfA; and considering the long-term risks, particularly with regards to value for money and quality of practice, the process to join AfA was paused by mutual agreement to enable RBG to consider its options going forward.
- 4.14 In view of the foregoing, officers re-engaged with ALS with a view to exploring further the possibilities of RBG joining the RAA. Having considered the progress made by ALS since our previous engagement and the good reputation that they have developed since inception, officers are of the view that ALS' operational model is more aligned with RBG's adoption principles.

This is especially so given ALS' progressive and modern approach, which primarily focuses on the needs of the child.

- 4.15 In addition, ALS' strong emphasis on cultural diversity and recruitment, as well as the opportunity for all existing RBG Adoption Team staff to be able to transfer across on the terms set by the National Joint Council (NJC) for local government services, means that ALS is a better match for RBG.
- 4.16 The engagement with ALS has been positive with both parties working to develop a transitional arrangement based on a fair and transparent financial modelling. This is encouraging for building a strong partnership relationship going forward, with the aim that RBG will be a partnering authority by 1 January 2022.
- 4.17 On 17 May 2021, ALS Management Board considered the request from RBG and gave an in-principle agreement to RBG joining the partnership subject to agreeing the financial elements. There is also an expectation that RBG would pick up any associated implementation project cost as the DfE funded the initial developments and original implementation costs, which are no longer available since the RAA had become operational.
- 4.18 Further to the above, a monthly Strategic Project Board has been established with key personnel between RBG and ALS, including independent project management resources to drive the process to a successful partnership arrangement. In parallel, there will continue to be interactions between relevant teams to agree the financial and associated HR terms, details of which will be covered within the Partnership Agreement to be entered by all parties.
- 4.19 On 15 July 2021, a letter was received from the DfE expressing the disappointment of the Minister for Children and Families that we are not yet in a RAA but being positive about current plans regarding ALS and noting that the SoS has powers to direct local authorities to join a RAA. This emphasises the urgent need for RBG to join a suitable RAA within the earliest feasible timescale as being recommended in this report.
- 4.20 Given the above, Cabinet is being asked to agree that RBG joins ALS RAA in accordance with the Government's expectations that RBG enters into a regional adoption arrangement.

5 **Available Options**

5.1 **Option 1 – To proceed with steps to join ALS (Preferred)**

5.1.1 This option will enable officers to take necessary steps for RBG to join ALS, which is the RAA considered to be the best fit continuity for RBG's adoption service.

5.2 **Option 2 – To proceed with the earlier Cabinet decision to join AfA**

5.2.1 The option to join AfA has been thoroughly considered and explored following the earlier Cabinet decision of 22 June 2020. Despite all best endeavours, parties have been unable to agree differences in relation to employee benefits, length of contract and spot purchasing of adopters. Given the long-term risks to the Council, particularly with regards to value for money and quality of practice, this option is not considered viable and as such not being recommended.

5.3 **Option 3 – Do nothing**

5.3.1 This option will mean that RBG will not be able to fulfil its obligation to join a RAA in line with the Government's expectations. This is likely to trigger the SoS to issue a direction on RBG to achieve this mandate on the terms not necessarily determined by our own assessment of being the best possible approach. As such, this option is considered damaging to the Council's reputation and not in the best interests of our children and young people. This option is therefore not being recommended.

6 **Recommended Option**

6.1 Option 1 above is the only viable and desirable option under the current circumstances as described in 4.4 – 4.20 above. If agreed, RBG will be able to fulfil the Government's directive for all local authorities in England to enter into a regional adoption arrangement. This option will also avoid the prospect of a direction being issued by the SoS specifically for RBG to comply with the Government's directive.

7 **Reasons for Recommendations**

7.1 The ALS RAA offers the arrangements that provide the best fit continuity for our adoption service and to deliver a choice of adoptive families for the children in our care where adoption has been identified as the permanence plan for them.

- 7.2 Although the legislative framework around regionalisation of adoption in England provides some flexibility for the Local Authority to transfer its adoption functions to a RAA of its choice, the SoS has the powers to direct a Local Authority to take specific steps towards achieving this mandate, where it is deemed that it has not taken reasonable steps to achieve it. Given that the original mandate was for all local authorities in England to join a RAA by April 2020 and the grace period of April 2021 has since passed, there are no other viable options other than for RBG to achieve this mandate as soon as practicable.
- 7.3 The letter from the Minister for Children and Families to the Director of Children's Services dated 15 July 2021 suggests that the DfE is considering issuing a directive for RBG to comply with this mandate. This will not only be damaging to the Council's reputation, it will take any decision out of our hands if the minister takes out an order. This must therefore be avoided.

8 Next Steps: Communication and Implementation of the Decision

- 8.1 A Strategic Project Board has been set up for the purpose of co-ordinating all activities required to achieve the mandate of joining ALS RAA. A process of continuous liaison between parties has also been established to ensure a smooth transition and the Director of Children's Services will maintain an oversight of this process.
- 8.2 Following the agreement of recommendations in this report, officers will have the delegated authority to enter into the necessary legal agreements required to implement the high-level decisions set out in Section 1 of this report, which includes the implementation of a meaningful consultation with affected staff members and TUs.
- 8.3 Negotiations and communications with the RAA and other relevant stakeholders will follow the standard procedure for negotiating legal agreements, including appropriate legal representation to preserve the wider interests of the Council and the children at the heart of the process.

9 Consultation

- 9.1 The proposal set out in this report is subject to the provisions of the TUPE Regulations due to the transfer of staff from RBG to a RAA. A meaningful consultation process had been undertaken with the affected staff members and TUs on the previous plan to join AfA. There have also been several follow-up meetings and consultations with both staff and TUs to keep them

informed on the proposal. A letter was issued recently to the TUs to formally notify them of the ongoing conversation with ALS and a representative of ALS has recently met with the affected members of staff as part of our stakeholder management process. A further formal consultation process will be undertaken with the affected staff members and TUs following Cabinet's approval of the decisions set out in this report.

- 9.2 Other relevant stakeholders, including affected families will also be consulted on the proposed change.

10 Cross-Cutting Issues and Implications

Issue	Implications	Sign-off
Legal including Human Rights Act	<p>Section 3ZA of the Adoption and Children Act 2002 (as amended by the Education and Adoption Act 2016) gives the Secretary of State power to direct one or more local authorities in England to make arrangements for any or all of their specified adoption functions to be carried out on their behalf by one of the local authorities named or by another adoption agency.</p> <p>The functions set out in the 3ZA(3) of Act are functions in relation to:</p> <ul style="list-style-type: none"> (a)the recruitment of persons as prospective adopters; (b)the assessment of prospective adopters' suitability to adopt a child; (c)the approval of prospective adopters as suitable to adopt a child; (d)decisions as to whether a particular child should be placed for adoption with a particular prospective adopter; 	<p>Davidaire Horsford Assistant Head of Legal Services 03 September 2021</p>

	<p>(e)the provision of adoption support services.</p> <p>This power came into effect on 7th March 2018. The Government’s expectation was for all local authorities to be part of a Regional Adoption Agency by April 2020.</p> <p>The Act includes provision for the Secretary of State to allow local authorities the flexibility to transfer their adoption functions to another authority or adoption agency.</p> <p>This report seeks, for the duration of the partnership agreement, to delegate to LBS (as host of ALS) four of the statutory and legal functions set out in Section 3ZA(3) of the Adoption and Children Act 2002 as follows:</p> <ul style="list-style-type: none"> the recruitment of persons as prospective adopters; the assessment of prospective adopters' suitability to adopt a child; the approval of prospective adopters as suitable to adopt a child; the provision of adoption support services. <p>The nature of the services to be carried out by a Regional Adoption Agency (RAA) will be essentially the same as the services currently being undertaken by the Adoption Team. The Council will retain its status as</p>	
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	<p>the client on whose behalf services are being carried out. Therefore, the provisions of the Transfer of Undertakings (Protection of Employment) Regulation 2006 (TUPE) apply to the prospective transfer of Council staff to the relevant RAA</p> <p>In advance of the prospective transfer of services the Council and the relevant RAA are required to consult with appropriate representatives of affected staff about</p> <ul style="list-style-type: none"> • the fact of the transfer; • the date of the transfer, • the legal, economic and social implications of the transfer; • any measures the Council proposes to take in relation to affected staff, connection to the transfer; • any measures proposed to be taken in relation to staff who are expected to be employees of the relevant RAA. <p>Under the governance arrangements for Adopt London South, the participating authorities enter into a partnership agreement with the London Borough of Southwark acting as the lead authority. In accordance with Article 11.02 (b); Part 2 of the Constitution, the Leader and/or the Cabinet may establish joint arrangements with one or more local authorities to exercise executive functions.</p> <p>Under the Responsibility for Functions section of the Constitution,</p>	
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	<p>the Cabinet is authorised to agree the recommendation in this report.</p> <p>There are no Human Rights implications at this stage.</p>	
<p>Finance and other resources implications</p>	<p>The cost of changing from the current in-house model to the provision of adoption services from Adoption London South (ALS) and interagency arrangements as proposed within the paper will result in a decrease in annual costs.</p> <p>The financial contributions are built on a demand-based financial model agreed by partnering authorities. The costs are split between internal costs (fixed) and interagency placements (variable). The financial model for the internal costs is split into two parts; (KPI 1) the first part covers early advice, recruitment, assessment & panels + family finding; this is based on the number of matches, and thus adoptive placements made and KPI 2 which covers post adoption support and is based on the number of post adoption support referrals. The proposed annual cost is £474k.</p> <p>There are additional one-off costs of £30k to cover transition & implementation and HR & legal.</p> <p>The annual interagency costs are estimated at £90k for the next three years.</p> <p>Over time, it is expected that the costs to individual authorities will reduce due to economies of scales achieved through interagency</p>	<p>Agnes Narkotey, Accountancy Business Change Manager 10/08/2021</p>

	<p>placements being achieved from across the partnership.</p> <p>The costs will be met from the annual budget in the Adoption Service within the CS Directorate.</p>	
Climate Change	<p>There are no climate change implications in connection with this report.</p>	<p>Henrietta Quartano, Senior Assistant Director Children's Safeguarding & Social Care 09/08/2021</p>
Equalities	<p>It is not envisaged that decisions through this paper will have any negative impact on any of the protected characteristics defined in the Equality Act 2010.</p> <p>Following an Equalities Impact Assessment (EqIA), RBG will give due consideration to any measures required to mitigate any identified impacts on residents who possess one or more of the protected characteristics as defined in the Equality Act 2010. This will be a subject being kept under review within the project risk register.</p>	<p>Henrietta Quartano, Senior Assistant Director Children's Safeguarding & Social Care 09/08/2021</p>
Procurement & Social Value	<p>This report does not require any call for competition, Regulation 12 of the Public Contract Regulations 2015 allows an authority to enter in to a collaboration agreement for the same provision of service provided that the intention is for authorities to satisfy the carrying out of a similar</p>	<p>Michael Glasspool, Procurement Business Partner for Health and Adult Services 09/08/2021</p>

	<p>service so the recommended decision is endorsed by Procurement.</p> <p><u>Social Value</u> The size and nature of this contract offers very little opportunity to seek social value at this time, which does not mean to say this will not be considered in the future. As such, no social value has been made under this agreement.</p>	
Information governance	A Data Protection Impact Assessment has been undertaken. The lawful basis for the processing of the data is A6 (1) (c) & A6 (3) (b).	Gerard Murphy, Head of Complaints, Information Governance & DMT Support, Children's Services. 10/08/2021
Staffing establishment	This process requires the transfer of staff under TUPE regulations and appropriate measures are in place to ensure that RBG complies and mitigate potential risks.	Funmi Akinyebo HR Manager, Children Service and Health & Adult Services 09/08/2021
Risk management	<p>The most significant risk from the decisions set out in this report relates to any further delay in the Local Authority's ability to join a suitable RAA.</p> <p>There is a project risk register which includes mitigating actions against identified risks. The risk register is reviewed regularly on a monthly basis at the Strategic Project Board and internal working group meetings.</p>	Henrietta Quartano, Senior Assistant Director Children's Safeguarding & Social Care 06/08/2021

<p>Corporate parenting</p>	<p>Local authorities must have regard to the seven needs identified in the Children and Social Work Act 2017 when exercising their functions in relation to looked-after children (and care leavers), and these apply to the whole local authority and not just to children’s services functions. The corporate parenting principles are intended to secure a better approach to fulfilling existing functions in relation to looked after children (and care leavers) and for the local authority to facilitate as far as possible secure, nurturing, and positive experiences for looked after children and young people and enable positive outcomes for them. The RAA proposal represents strategic collaboration endorsed by the DfE to secure the best outcomes for our vulnerable children.</p>	<p>Henrietta Quartano, Senior Assistant Director Children’s Safeguarding & Social Care 06/08/2021</p>
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11 Report Appendices

11.1 The following documents are to be published with and form part of the report:

a) None.

12 Background Document

12.1 Leader’s Decision dated 20 January 2020

12.2 Cabinet Report – Regional Adoption Arrangement dated 22 June 2020

Report Author: Henrietta Quartano, Senior Assistant Director
Children’s Safeguarding & Social Care

Tel No. 020 8921 4470

Email. Henrietta.Quartano@royalgreenwich.gov.uk

Reporting to: Florence Kroll, Director of Children's Services.
Tel No. 020 8921 8230
Email. Florence.Kroll@royalgreenwich.gov.uk

Chief Officer: Florence Kroll, Director of Children's Services
Tel No. 020 8921 8230
Email. Florence.Kroll@royalgreenwich.gov.uk