

## Bath & North East Somerset Council

MEETING/ DECISION MAKER:	<b>Cabinet</b>	
MEETING/ DECISION DATE:	<b>13<sup>th</sup> July 2016</b>	EXECUTIVE FORWARD PLAN REFERENCE:
		<b>E 2859</b>
TITLE:	<b>Future of Adoption Services; Adoption West Proposals and Engagement</b>	
WARD:	All	
<b>LIKELY TO BE TAKEN IN EXEMPT SESSION</b>		
<b>List of attachments to this report:</b> Access to Information Arrangements - Exclusion of access by the public to Council meetings 1. Adoption West vision and outcomes document - <b>Open</b> 2. Adoption West services in scope - <b>Exempt</b> 3. Profile of the Adoption West service user, staff and financial information - <b>Exempt</b> 4. Delivery model options appraisal document (Bevan Brittan LLP report) - <b>Exempt</b> 5. Adoption West Project plan - <b>Exempt</b> 6. Public, service user and staff engagement document - <b>Exempt</b> 7. Adoption West Governance Structure - <b>Exempt</b> 8. Potential Delivery Model Options - <b>Exempt</b>		

### 1 THE ISSUE

- 1.1 The development of Regional Adoption Agency proposals is part of the national regionalising adoption agenda as set out in 'Regionalising Adoption' (July 2015), and further developed in 'Adoption; A Vision for Change' (March 2016). Proposals are also informed by the Education and Adoption Act 2016.

This proposal involves formal collaboration with a number of local authorities to establish a Regional Adoption Agency in line with Government requirements. The local authorities involved are:

Bath and North East Somerset Council  
City of Bristol Council  
Gloucestershire County Council  
North Somerset Council  
South Gloucestershire Council  
Wiltshire Council

### 2 RECOMMENDATION

Cabinet are asked to:

- 2.1 Agree the outlined proposal for the development of a Regional Adoption Agency (RAA) in the form of a Local Authority Controlled Company.
- 2.2 Agree public and stakeholder engagement and consultation to secure this development.
- 2.3 Receive a further report on a final proposal in Autumn 2016.

### **3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

#### **3.1 Finance**

- 3.1.1 A full business case detailing projected costs and setting out funding arrangements will form part of the next stage of the process and will be reported back to Cabinet in Autumn 2016 (as it will for the other five local authorities).
- 3.1.2 The proposal is to establish a local authority trading company which as such will be controlled by each of the participating local authorities which will form the membership (shareholders) of the company. Each local authority has a fiduciary duty to look after the funds entrusted to it and to ensure that the taxpayer's money is spent appropriately. For that reason, a local authority must carefully consider any trading venture that it embarks on. The 2009 Trading Order England requires the local authority to prepare a business case. The participating authorities (or their executives) should approve the business plan before trading starts. This will form part of the subsequent report to Cabinet.
- 3.1.3 The development of the full business case will be facilitated through specific funding for external advice in conjunction with finance officers from partner organisations to support financial modelling for the new delivery model, interrogate unit costs analysis, agree estimates for projected future costs, develop funding formula, advise on apportionment of costs / risks, recommend appropriate financial systems and establish an effective accounting structure. The Adoption West RAA will explore options for any potential redundancy and pension liabilities to be covered by the partner LAs so as not to expose the new entity to an undesirable level of risk.
- 3.1.4 The plans for Adoption West RAA will not increase costs and will seek to deliver efficiencies.
- 3.1.5 Tax implications, working capital arrangements and insurances will be subject to further specialist advice and will be agreed during the next phase as part of developing the funding agreement; these considerations will be further defined in the full business case.
- 3.1.6 For the purposes of the applicable VAT legislation, the RAA will be providing "welfare services". This would bring the RAA within a VAT exemption. The consequences of the VAT exemption are twofold:
  - The RAA will not be required to charge VAT to the participating authorities in respect of the welfare services it provides.
  - Since it will be making exempt supplies, the RAA may not be able to recover the VAT it incurs in procuring support services from third

parties, such as finance, human resources advice and ICT. As such the potential costs of these services to the RAA should be factored into the full business case as part of the final decision making process.

## **3.2 Property**

3.2.1 Options are being developed around various hub and spoke models for delivering a regional service. Any such model will be enabled by flexible and remote working and utilisation of existing accommodation. The details relating to locations and provision of support functions are to be informed by analysis of service volumes and input from service users, staff and other stakeholders.

## **3.3 ICT**

3.3.1 No decisions have been reached regarding who will provide the RAA IT systems. Options will be considered regarding the relative strengths and weaknesses of existing systems in use by partner agencies or alternative systems based on an assessment of services and associated technical requirements.

3.3.2 The RAA will require access to service user records from the 6 local authorities. Decisions will need to be made regarding how this access is achieved with options including a feed into a new system or links into each of the 6 systems.

3.3.3 Decisions will also need to be made regarding other business and IT services required and who will supply them including email, storage, finance, payroll, HR, provision of hardware. There are perceived benefits to a partner local authority providing these services in which case they could be accessed via remote desktop protocol (RDP) or similar, providing a user with a graphical interface to connect to another computer over a network connection.

## **3.4 People**

3.4.1 The project will define the operating model and how the new organisation will be staffed/managed and structured during the next phase of service design. This will be developed in collaboration with current employees and stakeholders during the engagement period. Staff equality data is being gathered and will be analysed as part of a detailed equality impact assessment that will be maintained during development and delivery of proposals. The Equality Impact Assessment will also include actions to mitigate any identified impact for staff.

3.4.2 Initial advice has been taken regarding staffing implications relating to staff transfer and pensions. Once the preferred delivery model for the RAA is approved and required information has been gathered on the staff potentially affected more detailed work is planned.

3.4.3 It is anticipated that appropriate current employees of the local authorities will transfer to the new agency under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 to

the RAA as responsibility for the delivery of all aspects of the Adoption Services are transferred. A due diligence review of the Terms and Conditions which currently apply to employees is underway to identify what terms and conditions the RAA would inherit on any TUPE transfer. The RAA will consider how the variety of terms would fit in with its structure of terms and conditions and identify potential issues and/or conflicts which may arise.

3.4.4 As the transferring employees who would transfer under TUPE from the local authorities to the RAA are likely to be members of or entitled to join the LGPS, the local authorities will be obliged to ensure that when their employment transfers to the RAA, appropriate 'pension protection' is provided for them. It is anticipated that the RAA also participates in the LGPS to allow the transferring employees to continue with their membership or entitlement to join following the transfer. There are three different LGPS Pension Funds which are applicable (Avon Pension Fund, Gloucestershire Pension Fund and Wiltshire Pension Fund). Therefore there could be potential transfer issues to be considered between the LGPS Pension Funds regarding accrued benefits. The actuaries of the LGPS Pension Funds will be consulted as to the basis of any such transfers. The local authorities will ensure that any potential negative effects on them and their participation in the relevant LGPS Pension Fund are minimised.

## **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

4.1 This proposal addresses the duties placed upon the Council under the Adoption and Children Act 2002 as amended by the Education and Adoption Act 2016.

4.2 The Education and Adoption Act 2016 amends the 2002 Act to include:

4.2.1 The Secretary of State may give directions requiring one or more local authorities in England to make arrangements for all or any of their functions within subsection (3) to be carried out on their behalf by—

- (a) one of those authorities, or
- (b) one or more other adoption agencies.

4.2.2 A direction under subsection (1) may, in particular—

- (a) specify who is to carry out the functions, or
- (b) require the local authority or authorities to determine who is to carry out the functions.

4.2.3 The functions mentioned in subsection (1) are functions in relation to—

- (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;
- (e) the provision of adoption support services.

- 4.3 The legislation also reserves the right of the Secretary of State to require local authorities to terminate or change any relevant arrangements made in relation to adoption and to amend any regulations pertaining to adoption functions and services.
- 4.4 The Options Appraisal document (**Appendix 4**) sets out the legal implications pertinent to the establishment of a local authority joint venture. All such considerations will be addressed as part of the next phase of the project to provide assurance to the Council in the next report in Autumn 2016.

## 5 THE REPORT

- 5.1 The Adoption West project has developed from a steering group that formed in July 2013 to consider the possibility of more collaborative working to improve adoption and permanence service delivery across potentially eight local authorities (Bath & North East Somerset, Bristol, Gloucestershire, North Somerset, South Gloucestershire, and Wiltshire). Somerset and Swindon have subsequently joined other regional agencies. Initial work was undertaken by commissioning leads from Gloucestershire and Wiltshire before engaging the Institute of Public Care (IPC) to complete more detailed work. IPC presented a commissioning plan to the Directors of Children's Services for the Adoption West area and on the 18<sup>th</sup> July 2014 it was agreed that work should be undertaken to move towards a collaborative model of providing adoption services. Work began in April 2015 on activity to concentrate on and jointly commission a number of adoption service functions regionally.
- 5.2 Following the general election in May 2015 the context within which the Adoption West project was operating changed with the publication of 'Regionalising Adoption' (July 2015). In which, the government set out their proposals to move to Regional Adoption Agencies by the end of the Parliament in 2020 and invited expressions of interest from local partnerships. The paper included an emphasis on getting adoption/permanence right for harder to place children whilst ensuring adoption support is available and accessible to these adoptive families and set out three key aims:
- To speed up matching and improve the life chances of neglected children
  - To improve adopter recruitment and adoption support
  - To reduce costs

It is also clear that DfE expect to see Voluntary Adoption Agencies VAA / Adoption Support Agencies ASAs actively included in whichever delivery model is finally agreed and implemented and are 'particularly keen to consider models that have an element of cross-sector collaboration'.

- 5.3 Following market testing, an engagement event with voluntary sector providers and expressions of interest, it was agreed that 6 VAA / ASAs would be contributors to the design and development of Adoption West. The Voluntary Adoption Agencies and Adoptions Support Agencies involved in Adoption West include:
- Action for Children

- Adoption UK
- After Adoption
- Barnardo's
- CCS Adoption
- PAC UK

5.4 The Adoption West expression of interest was submitted in September 2015 and DfE agreed funding to begin in November 2015. Funding was agreed for resources to support the project including project management, professional leadership and independent specialist legal, financial and technical advice. Support and challenge to the project is also provided through an allocated coach offering guidance and acting as a link with the DfE. The project is required to provide progress reports to the DfE on milestone delivery and spending, subsequent phases of funding are contingent upon meeting DfE reporting and project gateway requirements.

5.5 Adoption West was included in the 'Scope and Define' category of projects and has achieved the following objectives during this period

- confirmed commitment to an agreed approach and delegated authority is in place to take the work forward
- project mobilisation team is in place
- vision statement and the key outcomes to be achieved by the RAA (**Appendix 1**)
- project scope including the adoption/permanence functions to be provided by the RAA (**Appendix 2**)
- an agreed profile of the RAA cohort including service user data, staffing information and budgets (**Appendix 3**)
- process for an options appraisal, gateway criteria and success factors has been followed to ensure sound decision making
- preferred delivery model agreed, following due consideration of possible models and legal advice informing a detailed options appraisal (**Appendix 4**)
- project plan to enable delivery of the approved model is in place and is being implemented (**Appendix 5**)
- key stakeholders including council members, adopters, and staff have been engaged in the development
- engagement with Adoption Panel chairs, NHS commissioners and providers to explore options for collaborative working recognising their centrality to the adoption process
- analysis of the stocktake of existing services is completed to inform the development and delivery of the RAA
- a transition plan is developed to take the project into the next phase and to ensure maintenance and improvement in existing services during the change process
- critical underpinning plans relating to ICT and information sharing, financial, risk management, and communication are in place

5.6 The governance structure outlined in **Appendix 7** shows the organisation of project groups and decision making. Each Local Authority and VAA / ASA

partner is represented on relevant groups. Representatives are responsible for feeding back to their respective adoption services and collecting views and ideas to feed into the groups.

5.7 As part of the scope and define phase Adoption West has developed and agreed a preferred delivery model. The process for reaching a preferred model comprised a review of provisional options, business case development, legal advice, and option appraisal. Project groups considered 4 initial options shown in **Appendix 8** and following soft market testing, debate and analysis of the strengths and weaknesses of the various models with a view to short-listing viable options, partners agreed to remove the fully commissioned model from consideration. The Governance group proceeded to develop and debate the strengths and weaknesses of the remaining 3 models:

- (i) Hosted by a single LA on behalf of a number of LAs
- (ii) Joint venture between LAs – public sector owned entity
- (iii) Creation of a new VAA – public and third sector ownership

5.8 Potential models (**Appendix 8**) were considered over a series of meetings. Legal advice was procured from Bevan Brittan LLP to assist in the development of outline business cases for each of the options and to conduct a thorough and independent options appraisal based on a clear brief and input from the Governance Group and Service Manager Group. The Service Manager Group provided input from the perspective of operational teams and service users to propose weighted criteria for assessing options. Appraisal criteria were used as a basis against which to assess the models under consideration.

5.9 The options appraisal exercise highlighted the potential benefits and, on balance recommended option 2, a joint venture local authority owned entity. This option is preferred because it will best allow us to deliver better outcomes for children, affording us greater flexibility and independence to pursue innovation and enterprise in how we deliver services. Option 2 is further supported by legal advice evidencing the feasibility and advantageous procurement position of such a model. The options appraisal has been reviewed by the Governance Group and Directors of Children's Services and they have approved the development of a full business case for option 2. Within this model and as stated in the delivery model options appraisal (**Appendix 4**) there is scope to include VAA / ASAs on the Board arrangements limited by specific legal parameters. Further discussion is taking place to ensure VAA / ASA interests are represented and promoted within this model and to explore how this may work in practice.

5.10 In summary, option 2 is preferred due to the following key strengths:

- (i) A corporate joint venture between the participating authorities creates a new entity which offers a neutral platform which 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.
- (ii) The structure allows governance arrangements to be straightforward with all partners represented on the Board of Directors (although the VAA / ASAs would have limited voting rights).

- (iii) 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
- (iv) 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 activities is with the controlling local authorities
- (v) Innovation and growth are better facilitated by this model. This may range from experimenting with new practice methodologies and trialling alternative evidence based practice models and programmes, through to embracing new technology and improving working practices such as team and service user communications.

5.11 The preferred option 2 is likely to involve slightly higher set-up costs and longer implementation timescales than option 1. This is due to the requirement to establish new legal structures and involve regulators in the formation of the company. All implementation costs are to be covered by DfE RAA grant funding subject to approval. Given the strategic benefits of the preferred model, the strengths outlined above, and DfE support for innovative delivery models, the additional cost and time is considered to be justified.

5.12 The preferred model and accompanying financial plans and project schedules have been submitted to the DfE. The DfE are reviewing plans of 21 prospective RAAs and any further progress of Adoption West proposals will be informed by the outcome of this process. Responses were originally expected on 16<sup>th</sup> May 2016, on reviewing proposals the DfE are now undertaking a series of discussions with prospective RAAs to agree plans and funding decisions.

5.13 There are a number of key areas that require further work to develop a full business case. The financial, property, HR and IT considerations are covered in Section 3 above. The other areas, initial proposals and factors for consideration during the public and service user engagement period are highlighted below.

### **Proposed plan and decision-making process**

5.14 The high-level plan is to engage and gather feedback on outline proposals in order to develop a full business case for decision making by the end of 2016. This will be followed by a period of workforce change processes, infrastructure set up and other implementation activity. It is anticipated that some service improvements identified may be implemented during the transition period to achieve incremental change and trial new ways of working ahead of a formal implementation date. The new service is planned to be operational from April 2018.

<b>Milestone</b>	<b>Date</b>
Business case development, legal & financial advice	May - Nov 2016
Local Authority political decision making and VAA / ASA decision making on 'In principle' approval of preferred model and public engagement	June / July 2016
Engagement with public, service users and staff on outline proposals.	July - Oct 2016

Draft engagement document included as <b>Appendix 6</b>	
Local Authority political decision making and VAA / ASA decision making on implementation of preferred model including service specification, budget and staffing	Nov - Dec 2016
Implementation – workforce change, establish legal structures and organisational infrastructure	Jan – Dec 2017
Implement new delivery model	April 2018

## **Governance and accountability**

- 5.15 The participating authorities will enter into a members or shareholders agreement. Any members' agreement will set out clearly what the purpose of the collaboration is and will clearly assign roles and responsibilities to each of the participating authorities. It will also deal with governance and issues such as dispute resolution. Adoption is regulated by statutory provisions and administered through the courts in line with these principles. Adoption services are administered through agencies approved by the secretary of state and are subject to inspection by OFSTED. Proposals will consider the potential impact of the inspection requirements, acknowledging that DfE and OFSTED are working together to agree the best approach for new delivery models. The Adoption Leadership Board and Regional Adoption Boards provide leadership to the adoption system, improve its performance and tackle the key challenges it currently faces by supporting the collection, analysis and dissemination of timely performance data and the sharing of best practice.
- 5.16 In addition to the Members Agreements each of the participating authorities will need to commission services from the RAA and this will require a further Services Agreement to be entered into jointly between the participating authorities and the corporate RAA or singularly between each participating authority and the corporate RAA.
- 5.17 Each of the participating authorities will have a role to play in the Board of Directors of the Corporate RAA. Statutory company directors are required to have the necessary skills and experience to carry out their duties effectively and to do so in good faith and in a way that would be most likely to promote the success of the Corporate RAA for the benefit of its members as a whole. All members or officers of an LA expected to act as statutory directors will receive detailed and appropriate training and appropriate support.
- 5.18 The six council's will wish to consider how effective member scrutiny of, and influence on, the Joint Venture Company is best achieved. Further work will be undertaken to develop a range of options for consideration at a second Member's workshop in September.

## **Health provision**

- 5.19 Initial engagement with Health service commissioners from the 6 Clinical Commissioning Groups has identified opportunities for more joined up working. However, current commissioning cycles and the complexity of disaggregating adoption and permanence related health services from wider children's services health provision may limit the potential for regional commissioning. Options are being discussed collaboratively to enable greater consistency of health provision across the region. Processes will also be

established to coordinate demand, and manage the administrative and financial implications of more flexible health services regionally.

### **Education services**

- 5.20 Links have been established with the Virtual Schools in each Local Authority to include them in the planning process for the RAA. Virtual School head teachers are keenly aware of their responsibilities to children who are adopted, which is a recent increase in workload and expectations for their services. As with health provision there are potential opportunities for joined up working which could provide better co-ordinated and more timely education services to adopted children. Initial work is now underway to collate information across the six Local Authority Virtual Schools to better understand the current picture of educational provision and to identify opportunities to work together and develop joint processes. It is anticipated that there will be some cross authority collaboration between the Virtual Schools, including the RAA, that will ensure more consistent services to children and adoptive parents, and make more effective use of available resources.

### **Adoption Panel Arrangements**

- 5.21 Opportunities will be considered to rationalise existing panel arrangements to ensure the process is as efficient as possible and resources are used most effectively on a regional basis. This may involve changes to local authority and voluntary agency panels to combine resources and ensure administration, structures and timing reflect and support the outcomes to be achieved by regionalising adoption and permanence services.

### **Voluntary Adoption Agency and Adoption Support Agency (VAA / ASA) roles and Considerations**

- 5.22 VAA / ASAs will form an integral part of new regional working arrangements. Further work will be undertaken to clarify the specific nature and extent of involvement of different agencies but partners are committed to engaging positively with VAA / ASAs and incorporating VAA / ASAs fully within any future RAA and as part of the wider permanence service mix. Partners anticipate thriving VAA / ASAs to be an essential part of the mixed local market of adoption service provision in the future and voluntary agencies will play a central part in defining their future role in further detail. Detailed consideration of the anticipated capacity and capability of a future RAA and other adoption service providers will be analysed in coordination with VAA / ASA partners and options considered that will ensure the continued strength of commissioned provision. Opportunities for expansion and diversification in the voluntary sector will be explored to address potential capacity gaps and growth areas by providing greater certainty and encouraging more collaborative working within regional arrangements to enable providers to develop new services and engage in longer term planning.

### **Service delivery and focus on operational practice excellence**

- 5.23 The new RAA will focus on excellent practice and improved outcomes for children through ensuring that new processes, activities and structures reflect the objectives and enable the planned benefits of the new entity. Service excellence will be supported through developing a clear service specification

and embedding effective processes and practices. This will be sustained through appropriate governance and performance management arrangements. Service excellence will be central to all aspects of the next phase of developing proposals and the fundamental criteria against which decisions will be made. The development and delivery of proposals will continue to benefit from detailed input of adopters, the voice of the child and voluntary sector partners.

5.24 We are in the process of looking across all partners and beyond to ensure the best practice of current services provide a baseline from which to develop new practices. The preferred delivery model will provide further continuous improvement opportunities through:

- greater freedom and flexibility to involve staff in governance and decisions
- being a single purpose organisation that will not have to focus on other local authority priorities
- create lean processes and removal of duplicated functions
- the potential to develop tailored back of house functions appropriate specifically to the business of adoption / permanence
- the ability to develop a culture and practices that focus purely around adoption and permanence support and the needs of the child / adopters.

5.25 Funding for the new RAA will be provided by the partner LAs, the mechanism for agreeing funding requires further work and agreement as part of the process of developing the full business case, governance and operational practices. Options include Local Authority funding for the new service on the basis of:

- historic and projected numbers of children looked after and number of adoptions and permanence solutions;
- historic and projected volume of activity to be delivered;
- inter-agency fixed fee per adoption;
- a combination of the above

### **Public, service user and staff engagement**

5.26 Plans are in place for more thorough engagement with adopters working with Adoption UK to facilitate surveys, focus groups and various forums to ensure proposals are informed by service users. Following consideration of these outline proposals by decision makers within partner organisations involved in the Adoption West project, there is a planned period of public, service user and staff engagement. Equality considerations will be explored through this engagement process and will inform the development of the Equality Impact Assessment. During this process there will also be a members' workshop currently being planned for September to follow up on the event in April 2016. The engagement period is planned to run for 10 weeks from Monday 25<sup>th</sup> July

to Monday 3<sup>rd</sup> October 2016. The purpose, approach and specific nature of the engagement process is set out in the engagement document **appendix 6**. The principal stakeholders include:

- Adoptees
- Adopters
- Birth families
- Local Authority, Voluntary Adoption Agency and Adoption Support Agency Staff
- Health service commissioners and providers
- Adoption panel members
- Education services

## **6 RATIONALE**

6.1 This proposal meets the requirements placed upon the Council to develop a new form of service to deliver our 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.

## **7 OTHER OPTIONS CONSIDERED**

7.1 See Appendix 4 and Section 5.

## **8 CONSULTATION**

8.1 Cabinet Member for Children and Young People, Chief Executive, Legal Services.

8.2 Staff have supported the process through an engagement event in November 2015 and ongoing communication with service managers and the project team through operational team meetings. Trade Unions have been informed of outline proposals and arrangements are in place for ongoing consultation as proposals are developed further. The adopter voice is provided through adopter champion representation within the governance structures and plans are in place for more structured involvement of service users, including the voice of the child. The report and specifically **appendix 6** sets out the approach to engagement and consultation with residents, service users and staff. The outcomes of this engagement process will inform the development of proposals for a decision paper to return to this committee later in the year.

8.3 Full consultation with the Section 151 and Chief Legal and Monitoring Officer will be undertaken within the next phase of the project.

## **9 RISK MANAGEMENT**

9.1 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.

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<b>Background papers</b>	Regionalising Adoption (June 2015) DfE Adoption: A vision for change (March 2016) DfE The Education and Adoption Act 2016 Adoption and Children Act 2002
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