

Adoption Birmingham RAA Programme

Regional Adoption Agency Outline Business Case

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A. Background

The Government's Regional Adoption Agency (RAA) programme began in 2015. The paramount focus of the development of RAAs is that children are given the earliest opportunity of finding a family with timely matching and placement of all children including priority children for whom it is harder to find adopters. There is also a focus on adoption support and a need to move away from piecemeal services and potential gaps in provision, towards consistent, effective and easy to access adoption support services. Regional adoption agencies are expected to deliver all adoption recruitment, matching and support functions.

The Government's Regional Adoption Agency (RAA) programme expects all local authorities to become part of an RAA by 2020. There are now 24 live RAAs, with a further 8 in development (via a range of different models), of which the Birmingham RAA is one.

Birmingham Children's Trust has made formal applications to join the three RAAs already established or developing in the West Midlands region, ACE, Adoption@Heart and Together4Children. These applications have been declined due to concerns relating to the impact the Trust's size would have on existing operational arrangements.

Birmingham is keen to join the Government's RAA Programme despite not being able to participate with neighbouring authorities as the Programme expects. Consequent

discussions with the Department for Education (DfE) have resulted in their agreement for Birmingham to take an alternative approach to establishing an RAA to deliver the complete range of adoption functions across the Birmingham region. It has also been recognised that the size of Birmingham's adoption service means that an RAA for Birmingham will have a broad equivalence to other RAA players in the country and West Midlands region.

Programme set up, governance and timescales

The Birmingham RAA Programme has been established to develop the RAA. An RAA Programme Lead has been appointed and an RAA Programme Board established to provide the overall direction and management of the programme. A detailed Programme Plan is in place and regularly monitored by the RAA Programme Lead, and a Risk Register for the programme is monitored by the Programme Board.

A number of workstreams have been set up to develop specific areas of the programme:

- Service Design and Practice Workstream
- Resources and Support Services Workstream
- Commissioning and Procurement Workstream
- Interfaces with Practice Reference Group.

The RAA Programme will also have support with Performance and Intelligence, and Communication and Stakeholder Engagement. Information Governance and other workstreams will be established as required at relevant points in the Programme.

Consultation on the development of a Regional Adoption Agency has taken place with a wide range of stakeholders already, including adopters, adoption staff, and the RAA team in the Department for Education.

The indicative timeframe for the RAA Programme is shown below, and also indicates where key dependencies lie.

	Q1 - 7-9/20	Q2 - 10-12/20	Q3 - 1-3/21	Q4 - 4-6/21	Q5 - 7-9/21	Oct-21
	Scoping and Model Considerations					
		Procurement				
		Design inc. co-design during competitive dialogue				
			Ofsted registration if required			
					Shadow RAA	
					Mobilisation	GO LIVE

B. Key Objectives and Required Benefits of an RAA Model

The ultimate aim for Regional Adoption Agencies (RAA) is to improve outcomes for children and adopters by enabling all children with an adoption plan to find a loving, stable home, as quickly as possible.

The Department of Education's seven core principles / criteria for RAAs are designed to support this aim, and will need to be met by the Birmingham model:

1. **Single line of accountability** – The new body must be in a position to act as a single entity.
2. **Core adoption functions are transferred to the RAA** – RAAs should be responsible for recruitment, matching and support.
3. **Pan regional approach** – The new body should have a regional reach as far as its key functions are concerned, particularly on family finding and matching.
4. **Recruitment, support and matching** – It is essential that RAAs drive forward the recruitment of new adopters utilising a wider geographical base audience to increase the scope for more matching and ultimately increasing placement opportunities.
5. Each RAA to appoint a **Head of Service** with line management responsibility for staff in the RAA.
6. **Single ring fenced budget**¹ managed by Head of the RAA.
7. **Partnership with the voluntary sector** – Voluntary Adoption Agencies (VAA) have an important role to play in the provision of adoption services. DfE wants RAAs to involve them in the design and implementation of RAAs and to consider their role in the delivery of services.

The rationale for an RAA via a collaborative partnership with a VAA

Accepting that Birmingham Children's Trust is not able to participate with neighbouring authorities in a "hosted" RAA model (i.e. one where a lead LA hosts the RAA on behalf of others in the group), and following agreement with DfE to take an alternative approach to establishing an RAA for Birmingham, the Trust is pursuing a collaborative partnership arrangement with a VAA to co-design and co-deliver the RAA. This approach has the support of the Department for Education.

The proposed Trust/VAA arrangement to deliver an RAA is the first of its kind and signifies a new and innovative way of working. The vast majority of other RAAs in the country have been formed from a group of local authorities delivering a shared adoption service which is hosted by one of the local authorities on behalf of the others, with pooled funding and a single management board. VAAs generally have an informal governance role. No other RAA

¹ The actual wording of this DfE criterion is "Pooled funding – LAs need to pool their adoption funding into one RAA funding pot that is managed by the RAA." However, this relates to RAAs where a number of LAs have joined together and that is not the case for Birmingham. The wording used here applies the principle to Birmingham's situation.

has been formed as a collaborative partnership between a local authority or Trust and a VAA.

The aim of the model is to combine the commercial acumen and best practice excellence of a reputable and top performing VAA with the security of revenue of the largest Children's Social Care provider in Europe. The combined strengths of the partners are expected to create opportunities for innovation, greater efficiency, high quality services and improved outcomes for children and families.

The voluntary sector brings a particular insight and dimension including specialist expertise and the voice of the adopter. Many local authorities and VAAs have already developed strong working relationships and partnerships over the years. VAAs are also commissioned by local authorities as providers of adoption services for thousands of families. The Trust wishes to build on this to create a new model of delivery for Birmingham.

In addition to meeting government expectations, the development of an RAA provides the opportunity to design a new service from top to bottom, led by a vision and commitment to excellent practice, innovative approaches to achieve improvements and value for money, drawing upon the expertise of both the Trust and the VAA.

Dependent on the type of structure that is used, it is anticipated that the successful VAA partner will make a direct contribution to the creation and management of the organisation by:

- Applying its business expertise and commercial acumen acquired through running adoption services as a business, to the functioning of the RAA, to achieve more efficient practices and increase productivity without compromising on service quality
- Ensuring a clear focus on practice excellence through sector expertise, e.g.:
 - Experience of adopter recruitment across a wide reach, producing a large and diverse pool of adopters able to meet the needs of children placed for adoption, including securing adopters for 'priority' children such as older children and children with additional needs
 - Successful adoption support delivery to complement the Trust's outstanding adoption support services and enable the further improvement and expansion of the range of high quality accessible support services for adoptive families.
- Offering the potential for social investment opportunities and access to charitable funding not currently available to the Trust.
- The voice of adopters embedded into the business.

The Trust has developed a Vision for the RAA, presented below. The Vision is expected to develop further during the co-design process with the VAA partner.

The Vision for the RAA

***Adopted children grow up in secure and loving families
where they thrive and reach their potential.***

This will be achieved through a collaboration combining the commercial acumen of a reputable and top performing VAA, the security of revenue from Birmingham Children's Trust, and the best practice excellence of both, to develop a dynamic, responsive and nimble agency with a dedicated focus.

The agency will:

- Deliver excellent child centred and adopter friendly services
- Pursue opportunities for innovation to achieve improvements
- Deliver excellent value for money
- Be a learning organisation – open to change and reflective of feedback
- Provide a service that is welcoming, user friendly and non-discriminatory for all its customers.
- Ensure strong and effective partnership working with children's teams in the Trust
- Create a powerful voice for adoption and adopters across the region to shape policy at a national level
- Act on opportunities to scale the model to become a national provider, creating economies of scale and adopter choice.

The ambition is that Adoption Birmingham RAA will develop a national reputation for delivering sufficiency and excellence in adoption.

Intended Outcomes

- Adopters are found to meet the needs of children in need of adoption.
- Adopted children move into a stable family as swiftly as possible
- Adopters are supported to provide a secure and loving family life where children thrive and reach their potential.

An Outcomes and Performance Framework will be developed to evidence achievement of these outcomes.

This Vision will be held at the forefront as the design of the RAA proceeds. In addition, a number of criteria have been developed for the RAA which will inform both the structural model to be adopted, and the operational delivery arrangements. These are presented below, and will also be used to assess the proposals brought by potential VAAs during the procurement process.

Structural and governance arrangements

(includes 6 of the DfE criteria for an RAA)

- Simple and effective governance arrangements across the RAA, Trust and Council can be achieved
- A strong 'identity' and brand for dealings with the public and third parties
- Clear mechanism through which liability of the participants is limited
- Minimum exposure to reputational risk for the Trust and Council
- Minimum exposure to financial risk for the Trust and Council
- The RAA as a whole is financially viable within the funding allocation available from the Trust.
- Flexibility to extend and enhance the remit of the RAA over time
- Single line of accountability – the new body must be in a position to act as a single entity.
- Core adoption functions are transferred to the RAA – RAAs should be responsible for recruitment, matching and support.
- Pan regional approach – the new body should have a regional reach for key functions, particularly family finding and matching.
- Appointment of a Head of Service with line management responsibility for staff in the RAA.
- Single ring fenced budget managed by Head of the RAA.
- Partnership with the voluntary sector – involvement in the design and implementation of RAAs and a role in the delivery of services.

Required Benefits – Quality of Practice, Performance and Outcomes

(includes the 7th DfE criterion for an RAA):

- Recruitment, support and matching – It is essential that RAAs drive forward the recruitment of new adopters utilising a wider geographical base audience to increase the scope for more matching and ultimately increasing placement opportunities.
- An increase in the number of children placed for adoption²
- A larger and more diverse pool of adopters able to meet needs of children placed for adoption from within the RAA²
- Increased use of early permanence placements

² See Appendix A for current performance of the Trust's adoption service

- Speedier matches, especially for 'priority' children, meaning fewer placement days from children entering care to being placed with their adoptive family²
- Improved accessibility, quality and range of support services for adoptive families, promoting placement stability and reducing disruption
- Improved permanence planning and transition preparation work for children.
- Adopters and adoptees are effectively involved in the operation of the RAA

Required Benefits – Efficiencies

- Reduction in expenditure on fostering placements through speedier adoptions – creating savings for the Trust
- Decreased use of inter- agency placements
- More children identified for adoption as a result of improved permanence planning, reducing pressure on the Trust budget.

Required Benefits – Leadership and national presence

- Swifter decision making, creating a more dynamic and nimble organisation.
- Provision of a more sustainable and dynamic business model to enable the VAA sector to thrive, adapt and be resilient in the face of future needs and changing demands.
- Creation of a powerful regional voice for adoption and adopters across the region to shape policy at a national level
- There may also be opportunities to scale the model to become a national provider creating economies of scale and adopter choice.

C. Determining the Optimum RAA Model

Having taken the decision to establish the RAA in collaboration with a VAA, and received DfE support for this approach, it was initially proposed that the Birmingham RAA would be established through a new separate legal entity, created through a Joint Venture (JV) between the Trust and a VAA to be procured for this purpose.

Two key steps have been taken to identify whether this is the optimum model or whether alternatives should be considered:

- An options appraisal.
- Market sounding.

In particular, the likely availability of suitable and willing VAA suppliers to work with the Trust in a collaborative partnership has been seen throughout as critical to the success of the RAA Programme.

a) The Options Appraisal

In September 2020, the Trust carried out an options appraisal with representatives from the Trust, the Council, the Department for Education appointed coach and the RAA Programme Lead (external) where the following options were considered:

Delivery option 1: Continue in-house (the Trust) VAA with re-engineering – Whilst the in-house team is held in high regard, it was felt that this option would benefit greatly from the specialist expertise, insight and the voice of the adopter that the voluntary sector and experienced VAA can bring. the Trust therefore wishes to build on this to create a new model of delivery with a VAA. This model does not meet the DfE criteria.

Delivery Option 2: JV between the Trust & VAA to create a Contractual Joint Venture – This scored the highest out of the delivery models being explored, based on the view it would offer the most flexible structure that meets the DfE criteria for a RAA and have lower set up costs and would allow the VAA partner to retain their own identity whilst benefiting from their specialist expertise and insight to deliver the outcomes required. This features of this model are more aligned to other RAAs, which are built on partnerships, generally between LAs (hosted model).

Delivery Option 3: JV between the Trust and VAA to create a Corporate Joint Venture – This scored the second highest due to the specialist expertise that a VAA can bring, however the corporate structure could be complex and time consuming to set up. This model was the least favoured by the market.

Delivery option 4: Outsource to existing VAA – This scored the lowest of the options as it was felt that the Trust would have little control over the outsourced model, creating a higher risk, reputational and cost wise.

b) Market Sounding

To understand the level of interest and capacity within the market to the collaborative partnership, the Trust carried out a market sounding exercise in August 2020. As part of this exercise, the Trust provided the market with background to the proposed Birmingham RAA and the intention to establish a partnership. It also provided an opportunity for the market to feedback on various models including Corporate and Contractual Joint Ventures and other best practice arrangements. A further market engagement event took place virtually on 5th October, followed by individual meetings with five providers who expressed an interest in this and returned a completed questionnaire.

The responses were positive in the main, but there was a general feeling of caution around the suggestion of a Joint Venture – both corporate and contractual, specifically around the governance of the JV, the amount of risk share, financial risks around the funding model, and risk to their losing their brand identity. The main findings from the market engagement exercises are:

- There is interest from the market in working with the Trust to develop an RAA

- Understanding about corporate and contractual joint ventures was mixed amongst providers and the terminology/ the legal structure was getting in the way of the fundamental conversations about opportunities for collaboration
- The market indicated there were other models which they could put forward
- Greater clarity was needed about the legal and operational framework within which the partnership would work
- Due to concerns about the financial risks, most of the providers were reluctant to take responsibility for managing the whole RAA, the majority were interested in delivering certain aspects of the current service
- Greater clarity was also requested on the funding model, with most providers looking for some commitment for them to continue to provide inter-agency placements via the national spot purchase arrangement, which is not one of the Trust's primary aims for a VAA partner in the RAA.

The results of both exercises therefore concluded that a collaborative partnership with a VAA had the greatest prospects of meeting the required criteria for establishing an RAA. It was also clear that to have the greatest chance of gaining the interest of a small pool of suitable and willing VAA suppliers to engage in a competitive dialogue procurement process, the exact structural model for the RAA should be determined through that dialogue, rather than pre-determined.

Consequently, the terminology used in relation to the establishment of the RAA, and related documentation has been changed to reflect that the Trust is seeking a collaborative partner rather than specifically a Joint Venture partner.

D. The RAA Commissioner

The Trust will be the 'commissioner' of the relevant adoption services (the "**Adoption Services**") from the RAA. The extent to which the Trust will commission and/or directly deliver the relevant Adoption Services will depend on resulting structural model for the RAA, which will be determined during the competitive dialogue process.

The Legislative Framework

The principal piece of legislation that provides the framework for implementing plans for adoption in England and Wales is the Adoption and Children Act 2002 (as amended) (the "**ACA 2002**"). Pursuant to section 2 of the ACA 2002 adoption services that are not provided by a local authority in England can only be provided by a body corporate that operates on a 'not-for-profit' basis (i.e. a voluntary adoption agency (VAA)).

Furthermore, the Council has exercised its powers under Part 1 of the Children and Young Persons Act 2008 (the "**CYP A 2008**") (and other applicable legislation) to enter into arrangements with the Trust for the discharge by the Trust of the Council's children's social care functions (including the Council's functions as an adoption agency). The CYP A 2008 and the associated Children and Young Persons Act 2008 (Relevant Care Functions) (England)

Regulations 2014 (the “**2014 Regs**”) require that the discharge of such functions can only be carried out by body corporate that operates on a ‘not-for-profit’ basis. In particular, section 2 of the CYPA 2008 provides that the discharge of a local authority’s adoption agency functions pursuant to Part 1 of the CYPA 2008 can only be carried out by a ‘registered adoption society’ (i.e. a VAA).

In addition, regulation 4 of the 2014 Regs provides that a local authority’s functions under Part 1 of the CYPA 2008 are not to be treated as “relevant care functions” for the purposes of section 1 of the CYPA 2008. It would seem that the intended purpose of this provision is to reserve the powers under Part 1 of the CYPA 2008 to a local authority and not enable such powers to be discharged by any body corporate that the local authority enters into arrangements with pursuant to Part 1 of the CYPA 2008. This therefore means that, any arrangements between the Trust and a VAA partner in relation to the RAA, will need to be appropriately structured in accordance with this legislative framework.

The Existing Constitutional and Contractual Framework of the Trust

In addition to the legislative framework referred to above, we must also consider the constitutional and contractual landscape within which the Trust currently operates. The Trust is a wholly-owned subsidiary of the Council and, pursuant to the Trust’s articles of association, the Trust is required to obtain the prior written approval of the Council (in its capacity as sole member of the Trust) in respect of specified matters (i.e. ‘Reserved Matters’). Pursuant to Article 29.2 of the Trust’s articles of association, the Trust is required to obtain the Council’s prior written approval to the following (among other things):

- (a) any proposal by the Trust to form or procure the formation of another legal entity or undertaking in respect of which the Trust would be a member, shareholder or hold any analogous position in any jurisdiction (Article 29.2(h)); and
- (b) the entering into by the Trust of any partnership or joint venture (Article 29.2(i)),

this therefore means that, if the resulting model for the RAA from the competitive dialogue process falls within the above categories, then the Trust will be required to obtain the Council’s prior written approval before it formally pursues such action.

Furthermore, the Council and the Trust are parties to a service delivery contract dated 29 March 2018 pursuant to which the Trust performs the Council’s children’s social care functions (including those relating to adoption) on the Council’s behalf (the “**SDC**”). Pursuant to the terms of the SDC, where the Trust proposes to subcontract a substantial part of its obligations under the SDC it must first obtain the prior written consent of the Council and also the Secretary of State for Education in accordance with the terms of the SDC. This therefore means that, depending on the resulting model for the RAA from the competitive dialogue, it is likely that the Trust will need to obtain these consents if it is going to subcontract any of the Adoption Services.

E. Procurement of a VAA JV partner

The Trust is the contracting authority for the purposes of this procurement. It is a “contracting authority” for the purposes of the Public Contracts Regulations 2015 (“PCR 2015”) and is therefore required to comply with the PCR 2015 when procuring works, supplies and services above certain financial thresholds (save where a specific exemption applies).

In this case, the value of the Adoption Services Contract is expected to be above the relevant threshold³. Furthermore, based on the objectives set out in *Section B Key Objectives and Required Benefits of an RAA Model* of this business case, no exemption from the PCR 2015 is expected to apply to this procurement⁴. The Trust is therefore required to run a competitive procurement process in order to procure the partner for these arrangements.

However, a “Light Touch” regime (“LTR”) applies to contracts for social and other specific services. Given the subject of the procurement, it is expected that the LTR will apply to this procurement which offers increased flexibility in the design of the procurement process. The Trust will be required to advertise the contract through a contract notice in the OJEU, but is free to determine the relevant procurement process taking into account the specificities of the service in question. The procedure must, however, be sufficient to ensure compliance with the principles of transparency and equal treatment, and all time limits imposed must be reasonable and proportionate.

Given the complexities associated with the requirement, some form of negotiation or dialogue will be required with potential partners during the procurement process. A process based on the Competitive Dialogue process is therefore recommended, which will allow the Trust to continue dialogue with the potential partners until it has identified one or more solutions that are capable of satisfying the requirements of the RAA. The Trust will then be in a position to close the dialogue and invite final tenders, which will be assessed against published evaluation criteria to determine the successful partner.

A Procurement Strategy has been prepared by the Trust, and reflects the details set out below. The learning from the market engagement referred to in Section D has been used to inform the design of the procurement process, including that providers stated that a lengthy or complicated procurement process would not be affordable for them and could act as a disincentive to bid.

An indicative Procurement Implementation Plan can be found at Appendix D.

Contract duration

The duration of the Adoption Services Contract will be five years from contract award with an option to extend up to March 2028, to tie in with the Service Delivery Contract (“SDC”) if

³ Currently £189,330 for services, increasing to £663,540 for contracts awarded under the Light Touch Regime.

⁴ This includes both the specific exemptions contained in the PCR 2015 (Regs. 7-17) as well as the grounds for use of the negotiated procedure without prior publication (Reg. 32).

it is extended beyond March 2023. This is necessary both for the development and stability of the RAA and adoption services, and to ensure the proposal is attractive to the market.

Should it arise that the SDC between the Council and the Trust were to end in 2023, a solution will need to be identified that would enable the Adoption Services Contract to have a longer duration than the SDC. There are a number of possible solutions available to the Council and the Trust to manage the potential 'early' termination of the SDC in 2023, including (without limitation) the extension of the SDC beyond March 2023 in respect of adoption services only with a mechanism for the Council to effectively "step-in" and take over from the Trust should the SDC terminate in March 2023. This is a matter for agreement between the Trust and Council.

Procurement Approach

The opportunity will be advertised in the Official Journal of the European Journal, Contracts Finder and www.finditinbirmingham.com.

This opportunity will need to be tendered in accordance with the Public Contracts Regulations 2015 (PCR). Given the services involved, the Trust has the option to procure the contract using the 'light touch regime' under Reg. 74 PCR. This will allow for an innovative, flexible and participative approach to the procurement to be taken. The procurement will be based on the basic principles of a competitive dialogue procurement as outlined in Reg. 30 PCRs.

Under this procurement procedure, the Trust will undertake a pre-qualification process (a Selection Questionnaire) and then invite shortlisted candidates to participate in a dialogue process during which aspects of the project may be discussed and solutions developed. The Trust may as part of this process identify aspects of its requirements which are not open to dialogue.

the Trust will continue the dialogue until it identifies one or more solutions that are capable of satisfying its requirements (which will need to be identified in the tender documents). the Trust will then close the dialogue and invite final tenders.

The procurement will be carried out in accordance with the general principles of transparency and equal treatment and will be structured to ensure that the objectives identified for the RAA are met efficiently and effectively using the following stages. It should be noted that the first stage will incorporate the SQ and ISOS together and only Providers successfully passing this stage will progress to the ISDS stage.

Stage 1 – Pre- Dialogue (Selection Questionnaire) and request for Invitation to Outline Solution (ISOS)

- Planning and initial preparation (pre-OJEU notice)
- Issue of OJEU contract notice, Selection Questionnaire (SQ) and ISOS documentation
- Evaluation and clarification of responses to SQ and ISOS and selection of shortlisted bidders to proceed to dialogue stage

Stage 2 - The dialogue - Invitation to Submit Detailed Solutions (ISDS)

- Issue of Invitation to submit detailed solutions document
- Conduct dialogue to develop solutions; during the Dialogue phase the Trust will have discussions with Bidders with the aim of identifying and defining the best solution to meet the Trust's requirements.
- Undertake further dialogue stages if required

Stage 3 – Post-dialogue – Call for Tender (CFT)

- Issue of Call for Tender document
- Submission of Final Tenders
- Evaluation of Final Tenders and selection of Preferred Bidder
- Clarification and optimisation of Preferred Bidder's Final Tender
- Contract award and standstill period
- Contract signature

Scope and specification

The procurement is for a partner to work with the Trust to co-deliver the RAA. How the RAA will be delivered, and in particular the respective roles of each party, will be co-designed and agreed during the procurement process. The innovative nature of the procurement process, whereby the solution is co-created between partners prior to contract award, means that the detailed requirement of a supplier cannot be specified in the initial Specification.

The Specification issued in the tender documents will therefore set out a specification for the entire RAA. This full RAA requirement will need to be addressed by both parties during the co-design process, but it is not intended at this stage to set out the requirement of the VAA supplier. It will set forth the existing service levels and the standards to which those services will be provided along with KPIs to measure performance. It will also set forth the parameters for future service provision the Trust believes should be provided.

The elements of the RAA Specification agreed by the end of the Competitive Dialogue process to be for delivery by the VAA partner, will subject to amendments arising from the Competitive Dialogue process, form part of the Contract and the successful tenderer will be bound to provide the agreed services in accordance with the Specification. A Collaboration Agreement will set out the responsibilities of each party in the partnership and the RAA delivery arrangements once these are determined.

Evaluation

The evaluation of tenders will be undertaken by officers from the Birmingham Children's Trust, supported by the Council. Independent Legal and contractual advice will be provided by Burges Salmon. Subject matter expertise will be provided by the Trust's Adoption Service. Officers from the Trust Finance, Commissioning and BCC Corporate Procurement Services will also be engaged.

The evaluation criteria for each stage will reflect, amongst other key factors, the criteria for the RAA set out in *B. Key Objectives and Required Benefits of an RAA Model*.

F. RAA Model Options and Operational Arrangements

As outlined in *C. Determining the Optimum RAA Model*, a collaborative arrangement will be put in place between the Trust and a VAA to co-create and co-deliver an RAA. The exact nature of the arrangement will be co-created during the procurement process against a set of criteria to ensure that the model produced will meet the requirements. This approach has been influenced by potential VAA providers as part of the market soundings, during which support for potential models was varied.

A comparison of the features of a Corporate Joint Venture and a contractual arrangement between the Trust and a VAA can be found at Appendix B. With either model, contractual agreements will be entered into which will set out (among other things) arrangements for the respective obligations of the joint venture parties in respect of the operation of the RAA (i.e. including its management), the treatment of assets and liabilities, risk and reward etc.

Potential Legal Structures for a Corporate Model and Corporate Governance Arrangements can be found at Appendix C.

Operational Governance Arrangements

A contract in respect of the operational governance arrangements of the RAA will be relevant whether or not the resulting model from the competitive dialogue process is a corporate JV or not. Where the resulting model is some form of contractual ‘partnership’ (i.e. opposed to corporate partnership) then it is likely that this contract will deal with both the partnership arrangements and service delivery arrangements of the RAA (i.e. between the Trust and its VAA partner). Where the resulting model is some form of corporate JV, then this contract will only deal with the service delivery arrangements (i.e. with the partnership arrangements being dealt with at the corporate level – see ‘Corporate Governance Arrangements’ above).

Depending on the outcome of the competitive dialogue exercise (i.e. and the extent of Adoption Services that will be delivered by the VAA partner) it is expected that the Trust will subcontract the delivery of some (or all) of its adoption services as part of these RAA arrangements to the relevant VAA partner. As mentioned in *Section D - The RAA Commissioner* above, the Trust will be required to obtain the necessary consents from the Council and the Secretary of State for Education to enable it to do this. As part of these operational governance arrangements, the Trust will therefore subcontract the relevant Adoption Services to the VAA partner.

It will be important for the Trust to ensure that, in this subcontract, it appropriately and effectively 'flows down' its obligations and risks under the SDC in relation to the relevant Adoption Services to the relevant VAA partner so that the Trust does not retain any inappropriate residual risk in relation to the Adoption Services. It should be noted that the Trust will be subcontracting the performance of the adoption services to the joint venture company and not sub-delegating the performance of the relevant functions. The Trust will remain responsible for the discharge of the relevant function pursuant to the SDC.

This contract would set out (among other things) provisions relating to:

- (a) the scope of the relevant services to be performed by the VAA partner;
- (b) the term of the contract, including any extension and termination rights in respect of the same;
- (c) any KPIs or other performance measures in relation to the relevant adoption services;
- (d) any dependencies that the VAA partner may have on the Trust in connection with the performance of the services (e.g. the provision of certain information, access to properties etc.);
- (e) the payment of the VAA partner for the adoption services (including, where applicable, any management fees or other similar arrangements that may apply, the raising of invoices in respect of the services and the timing of payments);
- (f) the liability of the Trust and the VAA partner in relation to the services and any associated insurance requirements;
- (g) Freedom of Information and Data Protection;
- (h) assets, third party contracts and intellectual property rights;
- (i) contract governance – i.e. how the VAA partner's performance of the adoption services will be monitored and reviewed etc.;
- (j) TUPE/Employment and pensions;
- (k) the resolution of disputes; and
- (l) exit management – i.e. provisions setting out what will happen on the termination or expiry of the contract.

The above-mentioned provisions will, insofar as is possible, need to effectively replicate the corresponding obligations that are placed on the Trust under the SDC.

G. TUPE and Pensions Implications

The advice below was provided by Burges Salmon. More detail can be found in **Appendix D. TUPE and Pensions Implications**.

The subcontracting of the adoption services to the VAA partner/RAA (where applicable) (the “**Subcontractor**”) is likely to trigger a transfer of the relevant employees of the Trust engaged in the provision of the relevant services to the Subcontractor under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“**TUPE**”). TUPE applies where there is a transfer of a business from one entity to another or a service provision change. If operations are effectively transferred to a new entity, then it is likely that TUPE would apply.

The effect of TUPE is that employees assigned to the relevant operations that will be performed by the Subcontractor would automatically transfer by operation of law to such Subcontractor on their existing terms and conditions of employment and with continuity of employment. TUPE provides protection for employees against dismissals and changes to terms and conditions of employment by reason of the transfer itself, unless there are economic, technical or organisational reasons entailing changes in the workforce.

An alternative way of proceeding, which might be raised by trade union representatives, would be to second employees to the Subcontractor rather than to transfer them under TUPE. This is a model that is sometimes used in the public sector and is sometimes seen as less contentious for employees and their trade union representatives. However, it would raise some potential issues both from a legal perspective and potentially from an organisational perspective.

For example, if the intention is to develop a culture focused on the specific objectives of the RAA, then it may be harder to achieve this objective if employees are still employed by the Trust. In addition, if there was the possibility of transferring any new entity to third parties in the future (e.g. where a corporate model is pursued), a secondment model might make it harder to ensure that employees transfer with the business in due course. We would therefore suggest that we discuss in more detail the potential implications of a secondment model if it is of interest, but our initial view is that a transfer of employees under TUPE is likely to be the preferred option.

Pension implications are discussed in **Appendix D. TUPE and Pensions Implications**.

H. The RAA Operating Model

Services to be provided

An exercise has been undertaken to identify how the RAA will operate in relation to the Trust, and respective roles and responsibilities regarding adoption related services, using a template developed through the national RAA Programme. This has resulted in the following agreed scope for the RAA and services continuing to be delivered by the Trust.

All elements making up the full adoption function, whether to be delivered by the RAA or to continue to be delivered by the Trust, will provide “back to back” delivery with services provided by the Council so that the full Service Delivery Contract with the Trust continues to be delivered seamlessly.

RAA	Remaining with the Trust
Child's Journey and Matching	
<ul style="list-style-type: none"> • Advice and support around early and ambitious identification of children for whom an adoption plan or Early Permanence placement might be suitable; attendance at legal planning meetings for all children 5 and under • Tracking all children who may require a plan for adoption, up to the granting of an Adoption Order. • Family finding and matching activity • Monitoring of all children pre SHOBPA, and Family Finder allocated once SHOBPA decision made. • preparing profiles of the Child. • Planning and review of introductions; introductions expenses and payment of Settling in Grants • Organising the Matching Panel and ADM arrangements for Matches, including involvement of a medical advisor; completing the paperwork for the match 	<ul style="list-style-type: none"> • Case Responsibility and Care Planning • ADM best interest decision • Any potential liabilities relating to the child or their adoption • Preparation of the child for an adoptive Placement; including preparation of the Life Story book and the Child Appreciation Day for children to be placed for adoption • Producing the Later Life Letter. • Legal advice in respect of the child's match with an adopter • ADM decision on Matches. • Birth Family support • Responsibility for both current and historical case records, and any potential liabilities relating to the child or their adoption.

RAA	Remaining with the Trust
Adopters and adoptions	
<ul style="list-style-type: none"> Recruitment, assessment, training and approval of Adopters Providing placements for the Trust as agreed. The purchase and sale of inter-agency Placements where this offers the most suitable Match for any Child. Adoption support needs assessments. Organisation and delivery of Adoption Panel activity to support consideration of prospective Adopters' suitability to adopt and Matches for Children with identified Adopters, and delegated responsibility for ADM decision making on Adopter approval. Notified adoptions except where the outcome of the care planning meeting is to progress via a notified adoption route, or the foster carer makes an application to adopt the child directly to the court. Step Parent Adoptions Inter Country adoptions via a Service Level Agreement with the Inter Country Adoption Centre. 	<ul style="list-style-type: none"> Notified adoptions where the outcome of the care planning meeting is to progress via a notified adoption route, or the foster carer makes an application to adopt the child directly to the court.
Support for those affected by adoption	
<ul style="list-style-type: none"> Pre and post order adoption support Funding applications to the Adoption Support Fund; match funding where required from an RAA budget. Letterbox contact exchanges and direct contact between birth families and their adopted children Providing advice and information to adopted adults about how to access adoption records; counselling and support to adult adopted people, including locating the adoption file and record sharing. Providing information to birth relatives of Adopted Adults about self-searching and signposting to other agencies if appropriate. 	<ul style="list-style-type: none"> Adoption Allowances Early help and safeguarding services for Adopted children Out of Hours Services Adoption disruption meetings All historical/closed adopter case records prior to RAA go live date; retrieval from archives of adopted adult records; payments to external archive supplier.
Business Support, QA, Staff development and Inspection	
<ul style="list-style-type: none"> Business Support services Staff and staff development: ensuring relevant and suitably qualified staff are in place, and arrangements for the development of staff through supervision and training Appropriate adopter and adoptee involvement to influence the planning and provision of RAA services. 	<ul style="list-style-type: none"> Complaints & compliments relating to children; Complaints & compliments relating to adopters and prospective adopters which relate to situations prior to RAA go live date.

RAA	Remaining with the Trust
<ul style="list-style-type: none"> • Performance & Intelligence, including national returns and analysis in relation to services in scope for the RAA, internal monitoring reports, regular and 'as requested' performance reports as part of contract monitoring requirements. • Quality Assuring delivery of the Services • Handling complaints & compliments received by adopters and prospective adopters after the RAA go live date. • Its own Ofsted inspections, and assisting with the Trust Ofsted inspections as requested. 	

The Design phase of the RAA Programme will consider how services in scope for the RAA will operate, maximising on the opportunities for service improvement that a complete re-design of the adoption service holds. Co-design with the VAA partner will further enhance opportunities and bring a strong focus on both innovation and efficiency.

The RAA service structure is likely to be based around a central co-ordination hub and single governance arrangements, with the following services / teams sitting beneath this:

- Marketing, Recruitment & Assessment
- Family Finding and matching
- Adoption Support
- Services for others affected by adoption
- Panel service
- Support services.

Work has been undertaken to identify the productivity requirements for each function.

Commercial trading

The RAA will primarily provide services for the Council, although the operating model and Trust ambition has identified advantages for the RAA in undertaking some commercial trading of identified adoption related products to other authorities in England. Products for which there is considered at this stage to be a possible market are:

- Delivery of adoption support services e.g. by a clinical psychologist or adoption support therapist employed by the RAA
- Online training for adopters
- Staff training in therapeutic approaches such as Dyadic Developmental Practice (DDP); it has already been demonstrated that selling training places to other agencies can make the training viable for own staff.

The delivery of sufficient high quality service provision to BCC will always be the first and foremost priority. Trading of services would only be within this context and it is anticipated that economies of scale will enable some trading of over capacity on a small scale which it is anticipated will enhance the RAA's reputation at a national level.

As the Trust was established in accordance with the 'in-house exemption' pursuant to Reg. 12(1) of the Public Contracts Regulations 2015 it is going to need to ensure that at least 80% of its activities are carried out in the performance of tasks entrusted to it by the Council. This means that the Trust is going to need to ensure that any trading of the RAA, considered in conjunction with any other trading that the Trust may be doing (if any), falls within this threshold. In carrying out this analysis consideration should be given not only to the revenue that is generated from these activities, but also a broader consideration/awareness regarding the extent of the activities being carried out by the Trust in relation to tasks that are not entrusted to it by the Council.

Support services and accommodation

The RAA will require the following support services:

- Finance
- HR
- Legal (commercial)
- IT
- IG
- Commissioning & Procurement
- Accommodation
- Customer relations
- Communications
- Insurances
- Learning and Development
- Payments
- Payroll/Pension
- Accounts
- Health and Safety

In addition, Business Support Services are identified above as one of the services to be provided by the RAA.

Specific requirements will be scoped and potential delivery options will be subject to an options appraisal. Options under consideration are buy back from the Trust, or supply of support services by the VAA JV partner subject to appetite and capacity. However, analysis is being undertaken around the potential issue of stranded costs for those support services with fixed costs which could become 'stranded' if delivery by the Trust was no longer required. To be financially advantageous, these costs would need to be more than offset by a lower price from the market, and this is being examined before determining whether it is viable for support services to be in scope for the procurement.

ICT Systems, Data, and Information Governance

As detailed in the section above, specific requirements will be scoped and potential delivery options subject to an options appraisal. In the case of ICT Systems, buy back from the Trust is a likely solution, although another option may be that the RAA could adopt and consolidate onto systems operated by the VAA JV partner, and become independent of Trust and Council ICT systems. This will be explored during the competitive dialogue procurement process.

If a buy back arrangement is pursued, the RAA will continue to use the ICT systems currently used by the Adoption service in the Trust purchased either from the Trust or direct from Birmingham City Council.

As the RAA is small (circa 100 people) it may not have a specialist IT lead to represent the RAA on the management of these services. An IT lead and DPO service will be required which could be purchased via an overall IT service from the Trust using the Trust IT Model or for resources in the Trust to act on behalf of the RAA. If the RAA has a separate ICT Support Service Agreement with the Council this may increase the workload required.

The assets in general will be owned by the Council with hardware (laptops / screens) being rented from the Council. Some specific exceptions to this may occur from time to time. Mobile phones are not considered assets and would most likely be owned by the RAA.

The RAA would be a data controller in its own right as it is providing a service which operates autonomously from the Trust and Birmingham City Council. There may be instances where the RAA, the Trust and the Council are joint data controllers. It is anticipated that the Birmingham Children's Collaborative Data Sharing agreement may cover the majority of the data sharing requirements with the RAA becoming an adhering party. This would require validation to test coverage as it is focussed on Social Care, Health and Protection of young people and not on HR and finance elements for example.

The RAA will need a suitable case management system (CMS) and required interfaces with the Trust's CMS will need to be identified along with appropriate information governance agreements. The Trust's adoption service currently uses the CHARMs CMS, and an options appraisal will be undertaken to identify the most suitable solution for the RAA.

I. The Financial and Funding Model

i) The RAA financial model

The RAA will operate within an agreed financial payment from the Trust as commissioner of the RAA for delivery of adoption services on its behalf. This payment will be no more than the Trust currently receives from the Council as payment for those adoption services in scope for the RAA. The Trust will retain some specific budgets for related items out of scope for RAA delivery (such as adoption allowances).

The current value of services which will be in scope for the RAA has been identified:

- Elements of the current adoption operating costs which relate to responsibilities in scope for the RAA have been identified, including apportioning costs that are currently supporting activities across adoption and fostering, and removing items agreed as out of scope for the RAA, e.g. adoption allowances. Apportionment has involved analysis of activity across two financial years to determine a suitable split.
- This has produced a baseline of current operating costs, with an analysis of how costs are currently attributed. This provides the indicative funding for the RAA budget modelling process.
- Similarly, current costs for the support services and accommodation identified in H. above attributable to adoption service delivery have been established. Some of the costs are derived from the Trust's Schedule of Charges relating to the Support Services Agreements with the Council, and others have been determined by activity analysis where support service functions operate across multiple services within the Trust.
- This work has established an initial sum of £695,808 (plus a further £328,591 for business support services) as a 2020/21 baseline position. This figure is currently being validated and refined. The cost of IT is the most significant component in this. In line with the identified financial modelling methodology, this sum once confirmed will be used as an indicative maximum sum available to the RAA to secure the required support services and accommodation.
- The result of this exercise shows that the current costs for services to be provided by the RAA per annum is as below:

Services in scope for RAA	Current operating costs
Central (senior managers, Psychologists, Intelligence Officer)	381,945
Marketing & Recruitment	151,433
Adopter Assessment and pre Order Support	1,048,534
Family Finding	757,362
Support for those affected by adoption	531,562
Adoption Panel	153,282

Interagency Fees	1,139,602
Business support service	328,591
Service delivery TOTAL	4,492,310
Support Services (IT, HR, Finance etc)	695,808
Current operating Total	5,188,118

- A zero based budget will be built by the RAA partners based on the co-design of the RAA service design solution. This may result in costs being deployed differently, although they will be in line with the Council's current payment for in scope adoption services at maximum.
- As part of the procurement process for the Collaborative Partner, and thereafter within the governance arrangements, the partners (i.e. the VAA and the Trust as service providers) will determine respective payments to be made to each for the service elements each is contracted to provide. The sum total of these two sets of payments will not exceed the total financial payment from the Trust for the RAA.
- In order to fulfil DfE requirements that the RAA operates as a single entity, the whole RAA budget must be ringfenced away from the Trust's budget, and also away from the VAA partner's main budget.
- The contract between the Trust and the RAA will include specified demand forecasts and the volumes expected for the contract sum payment agreed between the Trust and the RAA (underpinned by evidence).
- Any strategy around annual uplifts or tapered funding over the term of the contract for elements to be delivered by the collaborative partner will be for agreement, and will need to align to the Trust's overall contractual annual uplifts from BCC.

ii) Co-designing the RAA and building a zero based budget

- A zero based budget will be built on behalf of the RAA, based on the co-design of the RAA service design solution with the collaborative partner to meet required productivity and demand. This will then identify the payment to be made by the Trust as commissioner to the RAA for services provided, within the limits already set out here.
- This approach allows for genuine innovation and new approaches in the design of the RAA to be accommodated in ways that would not be possible if the current adoption service budget were simply adapted. For example, as design progresses, it is likely both that efficiencies will be identified in terms of how productivity requirements (e.g. number of placements, matches and support packages) will be achieved, such as reduced reliance on inter-agency placements, and also that practice improvements and new business development will require funding. Income streams may also be identified.
- The design will need to accommodate all staff in post and in scope for the RAA, as they will be entitled to an equivalent job in the new service. A recruitment freeze has already

been put in place to ensure that budget against vacant posts is available to be redeployed differently should this be indicated.

- **Inter-Agency Fees**

- Besides the staffing budget, a significant item in the current Trust adoption budget is for the purchase of Inter Agency placements from another adoption agency where it provides an adopter for a Birmingham child. Some income (though relatively much less) is also generated for the Trust where it is able to provide an adopter to another RAA or LA if there is no suitable match with a Birmingham child at the relevant point in time. Currently, around 50% of placements are made with external agencies (39 in 2019/20, and 48 in 2018/19), with 44 internal placements achieved in both 2018/19 and 2019/20.
- It will be a key aim of the RAA to improve productivity in the recruitment, assessment and approval of “RAA adopters” so that more children are placed locally and the spend on interagency fees reduces.
- Where inter agency arrangements are required, it is anticipated that the RAA will benefit from a developing Midlands wide arrangement with other RAAs, whereby inter RAA rates have been pegged below national VAA rates. This will not only enable some efficiencies, but also provide access to a wider pool of adopters across the West Midlands region, which is one of the national expectations of the RAA programme.

iv) Working Capital

The issue of whether or not the RAA will require working capital will depend on the structural model agreed, specifically whether there will be a separate legal entity. If the Trust were to make available working capital under specific exceptional circumstances it would be likely to be £0.400m., based on the maximum funding identified.

v) Costs of establishing the RAA

DfE have provided funding of £370,000 to support the setting up of the RAA, with a requirement that some funding is also identified by the Trust. This is being supported with officer in kind time.

vi) Tax implications.

Corporation tax and VAT implications for the RAA will depend on the structural model agreed, specifically whether there will be a separate legal entity.

The VAT implications of the proposed RAA have been considered and advice taken from PWC who are tax advisors to both the Council and the Trust. Based on that advice, the view is

that the risk of any unrecoverable VAT should be mitigated either through the Trust's existing VAT status agreed with HMRC for the purposes of a contractual joint venture, or through a VAT group in the case of a corporate joint venture. In either case, the VAT position should be agreed with HMRC as part of the creation of the RAA.

On the basis that either option would be operated under a not-for-profit principle, and this could be clearly demonstrated, corporation tax should not be payable.

A summary of advice received by the Council's tax advisors (PWC) in respect of this can be found at Appendix F.

J. Key Risks

	Risk	Impact	Mitigation	Status at October 2020
Programme Phase				
1.	Procurement of VAA partner Tendering process for VAA partner fails to secure a willing and able partner	High	<ul style="list-style-type: none"> Develop interest from the VAA sector via soft market testing and competitive dialogue tender process Accommodate issues and constraints presented by the VAA interested parties where possible to enable the process to proceed effectively. Involve Commissioning and Procurement expertise in the Trust and the Council. Consider alternative options including reducing control / risk for VAA, and involving the VAA in a less onerous arrangement Early sharing of Heads of terms and discussions during the competitive dialogue process. 	AMBER
2.	Innovative co-design process with VAA partner to ensure optimal arrangements for RAA results in lengthy procurement process which jeopardises Programme timescales		<ul style="list-style-type: none"> Extensive consultation with market to ensure process is optimum from their perspective Complete all major co-design work during process so mobilisation period post award is shortened Concurrent planning wherever possible 	RED
3.	Failure of Trust and RAA to agree price for delivery of RAA	High	<ul style="list-style-type: none"> Value for money ethos optimises use of resources Address at an early stage to ensure clarity of understanding, and acceptance of calculated costs. Effective financial modelling using baseline data for the Trust services alongside costing of new service design Gather specialist advice from HR and IT, finance etc 	AMBER
4.	Service design fails to bring in sufficient innovation, new thinking and challenge to current service delivery to address identified vision	Med	<ul style="list-style-type: none"> Clear service design methodology Engage and involve all stakeholders including staff and adopters in service design process Analyse and apply performance benchmarking and productivity requirements to service design Develop and apply quality standards Robust programme management 	AMBER
5.	RAA Case Management system and/or interfaces	High	<ul style="list-style-type: none"> Make speedy decisions around choice of CMS ICT lead involvement in developing appropriate 	GREEN

	Risk	Impact	Mitigation	Status at October 2020
	with the Trust CMS when RAA goes live are not in place		solutions. <ul style="list-style-type: none"> • Use existing solutions in the interim • Use spreadsheets, Tracker etc • Detailed information gathering and analysis prior to implementation. • Timely and robust staff training on the RAA Case Management system. • Early and effective staff training 	
6.	Information sharing and governance arrangements are not fully in place by go live, impacting on ability to share data and leading to delays, safeguarding risk or costly information security failures.	High	<ul style="list-style-type: none"> • Information Sharing Agreement between partners • Information Governance lead to ensure all requirements are in place 	GREEN
Transition to RAA and RAA delivery				
7.	Major reorganisation of adoption services has an impact on service delivery to children and adoptive families in the short term.	Med	<ul style="list-style-type: none"> • Effective transition planning and flexibility to enable service delivery priorities to be managed • Arrangements for staff to begin shadowing in their new roles • Clear change management strategy. • Staff engagement and consultation • Effective transition planning and flexibility to enable service delivery priorities to be managed. 	AMBER
8.	Performance dips during implementation due to pressures of change	Med	<ul style="list-style-type: none"> • Monitor closely through Performance Framework • Staff engagement and consultation • Management oversight • Clear change management strategy. 	AMBER
9.	Adopters lose confidence during the change process resulting in deterioration in relationships with the service	Med	<ul style="list-style-type: none"> • New branding is in place • Effective transition planning • Adopter forums and newsletters for 2 way comms. • Involvement of adopters throughout; informing prospective adopters they are already part of new arrangements • Service monitoring during transition to minimise impact on service delivery. 	AMBER

	Risk	Impact	Mitigation	Status at October 2020
Delivery of required productivity within agreed budget				
10.	RAA operational spend varies from budget Required RAA productivity is not achieved within resources agreed e.g. more inter-agency placements purchased than modelled Rise in costs beyond control of RAA e.g. increase in Inter Agency Fees	High	<ul style="list-style-type: none"> • Strong management and rigorous monitoring • Performance and financial monitoring frameworks in place • Effective financial modelling underpins RAA • Engagement of all partners in agreeing proposals ensures estimates are understood by all and are as accurate as possible. • Strong management and leadership ensures clear understanding of requirements • Performance and financial monitoring frameworks in place • Risk share agreement between the Trust and RAA 	AMBER

Appendices

Appendix A. Current performance on key performance indicators.

- **More children placed for adoption** - in 2018/19, 75 children were placed with adopters, 11% of all children ceasing to be looked after, compared with the 2018/19 national average of 12%. In 2017/18 and 2019/20, that percentage was 14%, so Birmingham performance here is relatively good. The Trust also has a policy to increase the proportion of children in care who are placed with connected carers, with a planned increase from 5% of all children in care to 25% over three years (current performance is 12%, against a national average of 13% on March 31st 2019). These factors mean that the planned increase in the number of children placed for adoption is relatively modest, but the RAA is required to effect a rise by 13 from 82 in 19/20 to 95 in the RAA's third year.
- **A larger and more diverse pool of adopters able to meet needs of children placed for adoption:** it will be a key aim of the RAA to improve productivity in the recruitment, assessment and approval of RAA adopters so that more children are placed locally and the spend on interagency fees reduces.
 - in 2019/20, 44 children (54% of placements made) were placed by the Trust adoption agency, compared with 38 (46%) placed by another agency (whether a VAA or another RAA); inter agency fees paid
 - in 2019/20, two thirds of the 52 priority children placed (i.e. those for whom it may be harder to find a placement - older children, those from a BAME background, those placed as a sibling group) were placed by another adoption agency, and only 18 with Trust adopters.
 - in 2019/20, 46 adopter households were approved, while 105 children were waiting to be placed, 63 of whom had a Placement Order.
- **Improved adoption timeliness:** in 2019/20, the 12 month average time between a child entering care and moving in with its adoptive family was 463 days compared with the national average of 363 days⁵.

⁵ for children who have been adopted, adjusted for foster carer adoptions

Appendix B. Features of a Corporate Joint Venture and a contractual arrangement between the Trust and a VAA

A Corporate JV between the Trust and a VAA to create a new separate entity	A Contractual arrangement between the Trust and a VAA to jointly deliver the RAA
<ul style="list-style-type: none"> • The Trust and the VAA would establish a separate legal corporate entity to trade as a corporate joint venture and each would be a member of the new entity . The corporate JV will be in a position to provide its services to a wider market than the Trust/ BCC. • Ownership is split between the Trust and the VAA (exact proportions to be determined by the appetite of the partners to share ownership, level of investment and risk. • Limited liability • A joint management board would be established to run and oversee the JV. – i.e. both the Trust and the VAA would appoint directors to the board of directors of the JV. 	<ul style="list-style-type: none"> • There is no separate legal entity and the participants retain their own individual identities and participate in the arrangement as independent contractors (i.e. rather than shareholders/members). A contractual JV enables the participants to have the same level of control as in a corporate JV, but in an unincorporated form i.e. on a line by line basis. • Participants will be responsible for claims and liabilities in respect of their own activities and participants’ liability is not limited as it would be in a corporate structure. • The RAA operates from either one of the existing independent JV participant entities (i.e. the Trust or the VAA) as there is no new separate entity. • The rights and duties of the participants, including the duration of the legal relationship, are set out in an agreement, giving both parties joint control over the arrangement • Participants account for their own assets, liabilities and cashflows within the arrangement set out in the Joint Venture Agreement. However, a joint venture will be equity accounted. • The parties would establish a management committee • Parties usually carry out specific parts of the joint project using their own separate business resources.

Governance

A Corporate JV between the Trust and a VAA to create a new separate entity	A Contractual arrangement between the Trust and a VAA to jointly deliver the RAA
Can be designed for flexibility/ autonomy. Requires an appointed board and a contract with the Trust as commissioner. It would have a 2 tier management structure as any company would – its members and board of directors. The board will be responsible for the day-to-day management of the JV and there may be some matters that are reserved to the members for approval.	Can be designed as required. Well positioned to promote co-production. The agreed governance arrangements in respect of the arrangement will be set out in the agreement.

Treatment of surpluses

A Corporate JV between the Trust and a VAA to create a new separate entity	A Contractual arrangement between the Trust and a VAA to jointly deliver the RAA
Surpluses may be returned to the Trust (in the form of service charges) or re-invested into the delivery of Adoption Services. The exact use of surpluses would be determined by the JV's constitution and the nature of the agreement between the JV and the Trust. Like any company, the JV is required to pay corporation tax on profits.	The exact distribution of surpluses between the parties would be determined by the JV agreement between the Trust and the VAA.

Advantages and Disadvantages of a Corporate JV between the Trust and a VAA to create a new separate entity

Advantages	Disadvantages
<ul style="list-style-type: none"> • A universally recognised structure with a clear corporate identity and established corporate governance regime. Can own its own assets, sue and be sued and enter into contracts in its own right. • Liability is limited to the amount each party contributes by way of share capital or undertakes to contribute to the assets of the company in the event of it being wound up. 	<ul style="list-style-type: none"> • Comprehensive legislative framework can restrict flexibility. • Reporting and compliance requirements bring increased administration and public disclosure of information. • Limited liability may be undermined in practice by guarantees and security

Advantages	Disadvantages
<ul style="list-style-type: none"> • Comprehensive legislative framework supports the contractual arrangements between the JV participants. • Creates a stronger 'identity'/brand for dealings with third parties • Provides a firm basis for internal management and employee structure – i.e. 2 tier management structure through board of directors and member. • Provides greater financial flexibility – e.g. can raise external finance. • Corporate JV embeds partnership working and genuine risk sharing. • Provides flexibility and allows decisions to be made in an efficient manner. • Despite some restrictions on the type and level of commercial activities, some freedoms are afforded to develop and trade services, including the development and delivery of new non-statutory services which can support the sustainability of the organisation 	<ul style="list-style-type: none"> • required to support external financing and third party contracts. • Relatively costly and time consuming to establish •

Advantages and Disadvantages of a contractual arrangement between the Trust and a VAA to jointly deliver the RAA

Advantages	Disadvantages
<ul style="list-style-type: none"> • Flexible option – can be quick to set up and easy to dismantle as no separate entity is created. Useful for strategic alliances or short term, single-goal ventures. • JV participants retain ownership of their own assets. • JV participant is not normally liable for the debts of the other JV participant but they may share liability on specific contracts with third parties. • Each JV participant will be taxed directly on its share of the profits and losses of the venture. • The duties and responsibilities of each party can be tailored to the strengths and expertise of each with a mixed delivery model 	<ul style="list-style-type: none"> • Lacks a separate legal identity – can suffer from a lack of clear structure and identity which may affect both internal operation and dealings with third parties. • No intrinsic limited liability of the participants. In addition, risk of creating a partnership, giving rise to unlimited joint and several liability where each of the JV participants is liable for all losses of the venture. • No clear management structure – this is something that would need to be agreed in the documentation. • Potentially difficult to raise external loan finance as not a legal entity and does not own assets – it cannot grant a floating charge as security for financing.

<ul style="list-style-type: none"> • Relatively simpler and less costly to establish • Likely to be able to use existing Ofsted registration of one of the JV partners rather than requiring new registration process 	<ul style="list-style-type: none"> • It is a more static and potentially less flexible model; where a contract starts to make detailed provisions for future decision-making it may prove more straightforward to align interests from the outset using a “structural” rather than “contractual” approach.
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Appendix C. Potential Legal Structures for a Corporate Model and Corporate Governance Arrangements

Potential Legal Structures for a Corporate Model

If the resulting model that comes out of the competitive dialogue exercise is some form of corporate joint venture/partnership then, based on the legislative framework set out in *Section D - The RAA Commissioner*, any resulting JV/partnership entity would need to be a 'not-for-profit' body corporate that is also registered as a VAA. This therefore limits the range of corporate structures available to pursue the key objectives to the following:

- (a) **Company Limited by Guarantee (CLG)** – in general terms such entities are ordinarily the preferred vehicle for operating on a 'not-for-profit' basis as they do not ordinarily have any share capital and therefore do not benefit from an intrinsic 'for profit' framework that is associated with companies limited by shares ("**CLS**"). This makes CLGs attractive corporate vehicles for 'not-for-profit' trading and also for charitable companies.
- (b) **Community Interest Company (CIC)** – CICs are companies that are established for the primary purpose of providing a benefit to the community. They can take the form of a CLG or a CLS; however, on the basis that CLGs are the preferred vehicle for 'not-for-profit' operations, then it would be more appropriate for it to be established as a CLG if used for the proposed RAA. One of the key features of CICs is that they have an 'in-built' asset lock, which sets out restrictions on the transfer of the CIC's assets.
- (c) **Cooperative/Community Benefit Society** – these types of entity tend to be used where it is appropriate to give a wide membership an equal stake in the organisation and an equal say in the management and other affairs of the business. The key difference between these two types of registered society are the stakeholder groups that they have been established to benefit. A Cooperative Society is established to benefit its members, whereas a Community Benefit Society is established to benefit the community more broadly (i.e. whether relevant stakeholders are members or not). Such entities are regulated by the Financial Conduct Authority (**FCA**) and are ordinarily only used where there are compelling reasons to do so.
- (d) **Charitable Incorporated Organisation (CIO)** – the CIO is a corporate structure that is designed specifically and exclusively for charities. A key feature of the CIO is that it has a less onerous regulatory and accounting regime than companies registered under the Companies Act 2006. This is because there is only one regulator for CIOs, which is the Charity Commission (c.f. charitable companies that are regulated by both the Charity Commission and the Registrar of Companies) and the charity accounting regime under the Charities Act 2011 applies to CIOs which is less onerous than the accounting regime applicable to companies under the Companies Act 2006.

However, it is likely that any partner VAA will have a particular view as to the most appropriate legal form in the circumstances to fit with its own corporate governance and, if the resulting model from the competitive dialogue is a corporate JV, then the required legal form will be determined as part of the dialogue process.

Corporate Governance Arrangements

Where a corporate JV model is pursued, then there would need to be a joint venture agreement (the “**JVA**”) that is put in place between the Trust, the VAA partner and the joint venture company that will effectively regulate the relationship between the Trust and the VAA partner as members of the joint venture company. The JVA may set out (among other things) provisions relating to:

- (a) the business of the joint venture company;
- (b) non-compete provisions – i.e. which prevent either member from competing with the joint venture company for business;
- (c) the provision of resources/assets to the joint venture company by the members;
- (d) provisions regarding the management of the joint venture company (e.g. each member’s right to appoint and remove directors of the joint venture company etc.);
- (e) the extent of each member’s membership/ownership of the joint venture company (e.g. 50/50 or some other split) and associated voting rights;
- (f) the provision of any guarantees by the members (if any);
- (g) the sharing of any risks and rewards (having regard to the fact that the joint venture company will be ‘not-for-profit’), including the treatment of any surpluses;
- (h) what happens in the circumstances where there is a ‘deadlock’ in decision-making between the members (i.e. in respect of the matters that are reserved to them to decide upon (see limb (k) below));
- (i) what happens where there is a change in control of any member;
- (j) provisions regarding default and termination in relation to the JVA;
- (k) matters that are reserved to the members for approval (i.e. those decisions of the board of directors that require member approval);
- (l) exit arrangements for any member, including the provision of resources on exit;
- (m) an order of precedence provision, which sets out what happens where there is any conflict between any provision of the articles of association of the joint venture company and a provision in the JVA etc.

As alluded to in (m) above, the JVA will sit alongside the joint venture company’s articles of association for the purpose of setting out the corporate constitution of the joint venture company. The articles of association will essentially regulate the relationship as between the joint venture company and the members collectively, whereas the JVA will regulate the relationship between the members of the joint venture company.

Appendix D. TUPE and Pensions Implications

This advice was provided by Burges Salmon.

The subcontracting of the adoption services to the VAA partner/RAA (where applicable) (the “**Subcontractor**”) is likely to trigger a transfer of the relevant employees of the Trust engaged in the provision of the relevant services to the Subcontractor under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“**TUPE**”). TUPE applies where there is a transfer of a business from one entity to another or a service provision change. If operations are effectively transferred to a new entity, then it is likely that TUPE would apply.

The effect of TUPE is that employees assigned to the relevant operations that will be performed by the Subcontractor would automatically transfer by operation of law to such Subcontractor on their existing terms and conditions of employment and with continuity of employment. TUPE provides protection for employees against dismissals and changes to terms and conditions of employment by reason of the transfer itself, unless there are economic, technical or organisational reasons entailing changes in the workforce.

It would be necessary to identify which employees are assigned to the relevant services. For many employees, this may be straightforward as they would clearly be assigned to the services. However, the position may be less clear for certain other employees, such as functional staff who may support both the adoption services and other services carried out by the Trust. For these employees, it may be necessary to identify who should transfer and who should remain and to decide whether any support services need to be provided.

TUPE also requires both the transferor and transferee employers to provide certain information to employee representatives and potentially consult with them. Failure to comply with the obligations to inform and consult under TUPE can result in an award of up to 13 weeks' pay per employee. This would therefore give rise to certain risks in relation to the transfer of employees but the risk of claims for a failure to inform and consult can be managed by carrying out an information/consultation process and it should therefore be possible to mitigate this risk to an acceptable level. There is no specific timetable for information and consultation under TUPE but a process of two or three months should be sufficient.

An alternative way of proceeding, which might be raised by trade union representatives, would be to second employees to the Subcontractor rather than to transfer them under TUPE. This is a model that is sometimes used in the public sector and is sometimes seen as less contentious for employees and their trade union representatives. However, it would raise some potential issues both from a legal perspective and potentially from an organisational perspective.

For example, if the intention is to develop a culture focused on the specific objectives of the RAA, then it may be harder to achieve this objective if employees are still employed by the Trust. In addition, if there was the possibility of transferring any new entity to third parties in the future (e.g. where a corporate model is pursued), a secondment model might make it harder to ensure that employees transfer with the business in due course. We would therefore suggest that we discuss in more detail the potential implications of a secondment model if it is of interest, but our initial view is that a transfer of employees under TUPE is likely to be the preferred option.

Initial discussions about the RAA development took place with the relevant unions representatives on September 9th 2020.

Pensions Law Implications

The Trust is an “admitted body” to the LGPS managed by the WMPF and appropriate arrangements are going to need to be put in place to ensure that any transferring staff formerly employed by the Council continue to have access to the LGPS (or a comparable scheme). It is expected that transferring employees directly recruited by the Trust would have equivalent protection (although pension protection policy does not apply to that group in the same way). Agreement will need to be had as to whether any new recruits of the Subcontractor are given access to the LGPS. It will be important to record responsibility for the pension liabilities which transfer to the JV (both at the outset and on termination) and how any growth in liabilities is to be managed.

The key question from a pensions perspective is: where would affected employees transfer to? As described in the TUPE analysis above, if there is going to be a service provision change and the transfer of operations from one entity to another, then affected employees would transfer from the Trust to the Subcontractor by the operation of law.

Pensions law does not generally provide that rights in connection with an occupational pension scheme (such as the LGPS) transfer under TUPE. However, the Best Value Authorities Staff Transfers (Pensions) Direction 2007 provides for pensions protection when employees transfer from a best value authority, such as the Council. This Direction essentially meant that those employees who originally transferred from the Council to the Trust would be entitled to retain access to the LGPS (or a scheme which is the same as, better than, or no less favourable than the LGPS). This protection was originally satisfied by the Trust becoming an admitted body to the WMPF (which is part of the LGPS). The Direction also applies on a second generation transfer and therefore the Council would be obliged to ensure that the relevant Subcontractor also provides access to the LGPS (through the WMPF) and becomes an admitted body to the WMPF in respect of those employees who originally transferred from the Council. This would allow pension continuity for transferring employees.

In respect of those employees who were recruited directly by the Trust, strictly speaking, the Direction does not apply to that cohort. Therefore, in principle from a legal perspective, the Trust could decide not to require the relevant Subcontractor to continue to provide access to the LGPS for the “new recruit” cohort. However, the Council and the Trust could agree that this cohort should also benefit from continued access to the LGPS. This is likely to be an important issue for employees and deciding to continue LGPS access may support a successful TUPE transfer and transition.

There are two methods by which an employer can join the LGPS: (i) admitted body status (being an agreement between WMPF, the Council and (here) the Subcontractor); or (ii) designated body status, which can apply where the Subcontractor is controlled by the Council. Under designated body status, the consent of the WMPF would not be required. A more detailed analysis of the ownership structure would be required in order to consider if designated body status is available. However, given the Trust participates in the WMPF under “admitted body status”, we would anticipate this is the route which is taken.

In practical terms, under either route, the liabilities to the WMPF are the same, and would need to be managed in a similar way.

On the basis that the Subcontractor is the employing entity, as above we anticipate that it would become admitted to the LGPS. In this context, there would need to be an agreement to the management of the pension liabilities for the subcontractor. Under the current arrangements for the Trust:

- a) the Council guarantees the liabilities of the Trust (the guarantee being in favour of the WMPF);
- b) the Service Delivery Contract between the Council and the Trust includes provisions to ensure funding for the pension costs and liabilities of the Trust;
- c) there is an agreement between the Council, the Trust and the WMPF whereby on termination of the SDC, and where services return to the Council, the pension liabilities of the Trust are subsumed by the Council; and
- d) there are certain controls on the actions which the Trust can take in order to manage increases in pension liabilities.

We would suggest that a similar framework is put in place between the Subcontractor, the Council, the Trust and WMPF to ensure that responsibility for pension liabilities is clearly set out. An arrangement whereby the Council guarantees pension liabilities is also likely to help ensure that the pension contribution rate payable to the LGPS by the Subcontractor is consistent with the contribution rate payable by the Council and the Trust.

In order to facilitate the above:

- i) an admission agreement (assuming the admitted body route is chosen) would be required to facilitate the relevant Subcontractor's participation in the WMPF/LGPS;
- ii) a policy decision will be required for the pension treatment of Trust employees who are direct recruits;
- iii) a four way agreement (or perhaps two agreements with the same effect) would support the management and allocation of pension liabilities.

Appendix E. Indicative Procurement Plan.

Procurement Phase	Anticipated Date
Stage 1: SQ / ISOP	
Issue OJEU notice	23-Nov-20
Release SQ / ISOP	25-Nov-20
Deadline for Clarification Questions	18 -Dec 20
Submission of SQ / ISOP	04-Jan-21
Evaluation / Moderation of SQ / ISOP	w/c 4 Jan-21
Clarification meetings (if required)	w/c 11 Jan 21
Approval of SQ/ISOP / debriefing of unsuccessful SQ / ISOP applicants	w/c 18-Jan-21
Stage 2: ISDP (criteria ensures fewer than 5 compliant SQ responses are received)	
Release ISDP to up to 3 bidders	26-Jan-21
Dialogue Session 1	w/c 08-Feb-21
Dialogue Session 2	w/c 15-Feb-21
Dialogue Session 3 (if required)	w/c 22-Feb-21
Stakeholder Day	w/c 22-Feb-21
Deadline for Clarification Questions	15-Mar-21
Submission of ISDP	31-March -21
Evaluation of Submissions and shortlist 2 highest ranked bidders	April 21
Debrief with shortlisted bidders	w/c 03-May-21
Stage 3: Call for Tender (CFT)	
Issue CFT to 2 shortlisted bidders	17-May-21
Close Dialogue / Issue final CFT	31-May-21
Deadline for Clarification Questions	12-June-21
Submission of CFT	14-June-21
Evaluation of CFT	15-30 June 21
Delegated approval by Council	July 21
Stage 4: Award / Preferred Bidder Stage	
Notification of Contract Award (identification of preferred bidder)	July- 21
End of Mandatory 10-day Standstill Period	
Contract Signature / Contract Award Notice	August-21
Stage 5: Mobilisation	
Mobilisation / Secure Planning with both partners	August-21
Stage 6: Commencement	
RAA Commencement Date	October 21

Appendix F. Summary of Tax Advice provided by the Council's Tax Advisors.

a) Corporation Tax

The key material corporation tax risk which has to be managed is that of taxable trading profits arising, either in the Trust itself or in any new company which is set up by the Trust. It should be noted in relation to this, that, in general, any legal entity which is separate to the Council, including a 100% owned subsidiary is generally taxable, the same as any other company.

On 23 April 2018 an HMRC clearance letter confirmed that, at the time clearance was sought, the proposed Children's Trust arrangements with BCC were not considered to be trading and therefore no taxable trading profits (or trading loss) should arise from these activities. This was based on a number of conditions required for a Company to lack sufficient commerciality to be "trading" which it was agreed the Trust's proposed arrangements met.

These key criteria still apply regardless of whether a Corporate JV or Contractual JV model is chosen. Therefore, to avoid additional corporation tax on trading profits, it should be demonstrated that either model meets the non-trading status;

Contractual JV

In the case of a Contractual JV; demonstrate that this does not taint the Children's Trust existing arrangements, i.e. that the various conditions referred to above continue to apply, in particular that the Trust's arrangements are such that it continues to meet the non-trading status. Specific care will need to be given to whether the contractual JV itself can make a "profit" and whether this could taint the Trust's overall position. Notwithstanding this, as long as it can be shown that the overall non-profit making purpose and arrangements for the Trust itself remain in place, e.g. the "JV profit" is effectively just a ring fenced profit, which is then used by the Trust to finance its main activities, then it should be possible for the Trust to preserve its non-trading status.

Corporate JV

The Corporate JV could be set up to mirror the Trust's structure, i.e. it is a limited by guarantee company, with an asset lock and non-profit making purpose etc. As long as the corporate JV meets the conditions set out in the clearance, i.e. structured as a mini version of the Children's Trust with similar conditions and articles, then it should be possible for it to achieve a non-trading status as well. Clearly, this entity is likely to be jointly owned, so this arrangement may be more difficult to construct, and there is likely to be a more significant tax risk as a result (e.g. the third party may have particular requirements).

Without knowing how the company will operate and what the sources of income are, it is difficult to say for certain whether the non-trading conditions can be met - further work should be undertaken if this option is preferred, to look at precise contractual arrangements to see whether the non-trading status could be achieved.

Using a special type of company structure, e.g. Community Interest Company ("CIC"), is unlikely to make any material difference to this position, though optically it is likely to more naturally "look" non-trading and would be able to use the particular CIC features to add weight to the conditions set out in the clearance, for example:

- This structure is typical for a company that has community-based objectives and is for the benefit of the community, rather than the shareholders (i.e. not profit driven);
- The entity would have a "community interest statement" explaining the purpose of the business;
- The entity would require an "asset lock" being that the company's assets will only be used for its social objectives, and setting limits to the money it can pay to "shareholders";
- Specific articles within the memorandum of association;
- Entity must be approved by the community interest company regulator.

Whatever the corporate entity chosen, it is likely to still be taxable on its non-trading income, e.g interest income, chargeable gains etc.

A charitable company, with approved status, is likely to give a more straightforward tax position (not taxable in relation to its primary purpose trading activity even if it generates a profit), but there are likely to be more constraints on its surplus, activities and regulatory requirements.

Under both models, it should be shown that the Corporate JV meets, or the Trust continues to meet the conditions of the clearance, for example, by demonstrating:

- that the making of an overall profit / surplus is not a motive;
- if a surplus arises, it will, legally and practically, be utilised to provide the same service in the future;
- if there is a surplus when the Company is wound up, demonstrate that the surplus is subject to an "asset lock".

Generally, under both options, it should be possible to get to a position where trading profits on these activities are not taxed on the basis the agreement is set up to meet the conditions that the Children's Trust should already be meeting per the clearance application. The main difference is that with a Corporate JV, it may be more difficult to design an arrangement which mirrors the Trust's set up, given the commercial objectives of the JV and the third-party involvement.

b) VAT

	Corporate Joint Venture	Contractual Joint Venture
How will requirements and structure of the JV (corporate or contractual) affect VAT liabilities?	<p>If the RAA is a corporate JV, its VAT status will be determined by the nature of the services that it provides to BCC/the Trust and/or the status of the JV entity. If the corporate JV entity's services are wholly exempt from VAT, the RAA will be unable to register for VAT precluding VAT recovery on expenditure. This will lead to additional costs for the RAA (and BCC/the Trust) as VAT will be an overhead cost for the RAA that will contribute to the net cost of the services provided to the Trust/BCC. Ultimately, the RAA would not be in the same VAT position as the Trust leading to potentially higher costs for the RAA and the Trust/BCC.</p> <p>If the RAA's services are liable to VAT (wholly or in part), the RAA will be required to register for VAT if its services that are liable to VAT will exceed £85,000 per annum, as the RAA will if its services are liable to VAT in part. If the JV RAA's services are wholly liable to VAT, the JV RAA will definitely be required to register for VAT.</p> <p>As above, the VAT treatment of the RAA's services will depend upon the status of the RAA and/or whether or not the RAA's services are OFSTED regulated. If the RAA is a charity or public body, or its services are wholly OFSTED regulated, its services will</p>	<p>As with a corporate JV, the VAT status of a contractual JV will also be determined by the nature of the services provided under the arrangements between the Trust and its JV partner alongside the status of the service provider, e.g. a charity or regulated welfare agency or institution. The VAT treatment of the RAA's services will primarily depend upon whether or not the JV partner is a charity, public body or regulated welfare agency/institution.</p> <p>If the JV partner is a charity or public body, if its services under the contractual JV fall within the HMRC definition of welfare services, the RAA services will be VAT exempt. If the JV partner is not a charity or public body, the VAT treatment of the RAA services will depend upon whether or not those services are OFSTED regulated.</p> <p>Where the services provided under the contractual arrangements are wholly or predominantly OFSTED regulated, those services will likely be exempt from VAT preventing VAT recovery by the JV partner on expenditure incurred in providing those services. As in 1.1 above, this will give rise to additional costs for the JV contract (and the</p>

	Corporate Joint Venture	Contractual Joint Venture
	<p>be exempt from VAT such that the RAA cannot register for VAT. If the RAA is not a charity or public body but its services are OFSTED regulated in part, the RAA will need to register for VAT but will not be able to fully reclaim VAT incurred on its expenditure. If the RAA's services are not OFSTED regulated and are wholly liable to VAT, the RAA will need to register for VAT and will be entitled to full VAT recovery on its expenditure giving the RAA the same VAT recovery position as the Trust/BCC.</p>	<p>Trust) as the RAA would not be in the same VAT position as the Trust leading to potentially higher costs for both the RAA and the Trust.</p> <p>If the contractual JV services provided are predominantly liable to VAT (e.g. being more akin to strategic/management services) the services provided under the contractual JV may be wholly liable to VAT. If so, the RAA JV partner would need to charge VAT on its services provided to the Trust/BCC etc. This would enable VAT to be reclaimed on expenditure incurred in providing the contractual JV services thus giving the JV partner the same VAT recovery position as the Trust/BCC and potentially reducing the cost of the services provided under a contractual JV RAA. Any VAT charged to the Trust under a contractual JV arrangement should be recoverable by the Trust thus minimising the Trust's costs under the arrangement. Ultimately, this should put the contractual JV into the same VAT position as the Trust.</p>
<p>What would the VAT status be (in either event) and would this result in any additional costs? If the RAA's services are VAT exempt, wholly or in part, what</p>	<p>If the RAA's services are wholly exempt from VAT, the RAA will be unable to register for VAT thus precluding VAT recovery on expenditure. As VAT will then be an overhead cost for the RAA, this will lead to additional costs for the RAA (and BCC/the Trust). If the RAA's services are liable to</p>	<p>A contractual JV for the RAA would not create a separate entity for VAT purposes as the RAA services would be provided to the Trust by its JV partner. This is unlikely to have any impact on the way that the RAA services are treated for VAT purposes as the key factors in</p>

	Corporate Joint Venture	Contractual Joint Venture
would the most VAT efficient legal structure (for the corporate option) be to mitigate any irrecoverable VAT costs?	<p>VAT, wholly or in part, the RAA will be required to register for VAT.</p> <p>If the RAA's services are partly liable to VAT, this will give the RAA some VAT recovery but only in respect of those services on which it charges VAT to the Trust. This will give rise to additional costs for the RAA and the Trust/BCC albeit to a lesser extent than if the RAA's services were wholly VAT exempt such that the RAA cannot register for VAT. If the RAA's services are wholly liable to VAT, the RAA will be entitled to full VAT recovery on its expenditure. If this were the case, the RAA should be in the same VAT recovery position as BCC/the Trust.</p> <p>The most VAT efficient structure for the JV RAA would be for the JV to be neither a charity nor public body; nor for the JV RAA's services to be OFSTED regulated. However, if the JV RAA's services were predominantly strategic/management services that are not OFSTED regulated, it may be possible to agree with HMRC that the JV RAA's services are wholly liable to VAT. If this could not be achieved and the RAA is wholly exempt and unable to register for VAT, it may be possible to implement an alternative structure involving VAT grouping. Such a structure would require at least 2 corporate members within a VAT group, e.g. the JV RAA and another body</p>	<p>determining the VAT treatment of the JV services will always be the nature of the services being provided and the status of the provider.</p> <p>Responsibility for determining the VAT treatment of the JV services as part of a contractual JV RAA would lie with the JV partner as it would be providing the services to the Trust. As above, the VAT treatment of the JV partner's services will be determined by the nature of the services being provided; the status of the JV partner, e.g. a charity or public body; and/or if the services are wholly or predominantly OFSTED regulated. If the JV partner is a charity or public body, or its services are wholly or predominantly OFSTED regulated, the JV partner's services would ordinarily be VAT exempt. If so, as VAT would not be reclaimable on expenditure incurred in providing the JV partner's services, this would result in additional VAT costs for the JV partner and ultimately for the Trust/BCC.</p> <p>We recommend that in procuring a JV partner, prospective partners are required to detail their proposed tax treatment of the RAA services to be provided to the Trust for evaluation as part of the procurement process. It is well established that the services provided by the Trust</p>

	Corporate Joint Venture	Contractual Joint Venture
	<p>corporate; and would require the other body corporate (i.e. not the RAA) to be the VAT group representative member that contracts with the Trust. It is likely that such a structure would require clearance from HMRC as we understand that HMRC are currently reviewing similar structures to determine if they are overly favourable to taxpayers.</p>	<p>to BCC are wholly liable to VAT, hence it is the JV partner's services that could result in the RAA services being exempt wholly or in part. Therefore, it will be necessary to evaluate the tax treatment of the RAA services as proposed by prospective JV partners to ensure that there are no additional tax liabilities for the Trust/BCC. Where prospective JV partners are established bodies, we would expect that they would already have tax efficient structures in place such that they can ensure that their services provided to the Trust are wholly liable to VAT.</p>
<p>Is there a financial benefit in pursuing a Charitable Company/CIO structures from a tax perspective (e.g. through any applicable tax reliefs/preferential tax treatment etc.) that would outweigh risks?</p>	<p>As VAT is a transaction-based tax, the rules to determine the VAT status of a charitable company/CIO structure are the same as those for a corporate JV, i.e. the status of the entity and the nature and resultant VAT treatment of the entity's services. Therefore, there may be little difference/benefit from a VAT perspective of pursuing a charitable company/CIO structure.</p> <p>Whilst a charitable company may be eligible for VAT reliefs available to charities on its expenditure, e.g. zero rating of charity advertising, there is an increased risk that a charitable company's services would be exempt from VAT thus precluding VAT registration and/or full/any VAT recovery on expenditure. This is on the basis that welfare</p>	<p>Whilst a charitable JV partner may be eligible for VAT reliefs on its expenditure, there is an increased risk that its RAA services would be exempt from VAT thus giving rise to additional VAT costs as a charitable JV partner would not be entitled to full VAT recovery on its expenditure associated with its provision of RAA related services. Any additional VAT costs for a JV partner could ultimately become additional costs for the Trust/BCC due to an increased service cost from the JV partner.</p>

	Corporate Joint Venture	Contractual Joint Venture
	services provided by a charity are exempt from VAT. HMRC's guidance on welfare services includes adoption services hence the increased risk that a charitable company may be providing exempt services and unable to register for VAT or fully reclaim VAT on its expenditure.	
What would be the tax/VAT impact on the subsidiary if it trades? (How) will this affect the Trust's own Tax and VAT status?	As above, given that VAT is a transaction-based tax, any trading by the RAA should fall within the normal VAT rules and be liable to VAT unless the services concerned fall to be exempt from VAT. Similarly, the VAT treatment of such trading will determine the RAA's requirement to be VAT registered and its right to VAT recovery.	As above, given that VAT is a transaction-based tax, any trading by a JV partner should fall within the normal VAT rules and be liable to VAT unless the services concerned fall to be exempt from VAT. Similarly, the VAT treatment of such trading will determine the JV partner's VAT registration and recovery position.