



16th November 2016

RE: The Regional Adoption Agency (RAA)

I write in connection with the above collaboration and the insurance implication which flow therefrom, some of which you may or may not have been made aware of following discussions within your own organisation. I will try and set out briefly the salient aspect of the collaboration and then offer consideration of the insurance solutions we propose, which for all RMP clients apply automatically unless you tell us to the contrary.

The conclusions and suggestions as set out in this letter are drawn from the various discussions we have held with Stockport MBC as the host authority and also having sight of the documents mentioned below at various stages of being drafted.

1. Integrated Services Agreement
2. Secondment Agreement

General:

1. In the summer of 2015 Central Government announced it wanted all Council Social Services terms to work more closely together over adoption measures so as to ease the red tape, pool vital resources and share more closely their experiences. This 'merger' of resources must be completed by the end of this parliament – so around May 2020 at the latest – and it is compulsory - the RAA.
2. The RAA we are concerned with here is a collaboration between Stockport/Trafford /Cheshire East/Salford and Manchester C C. Each member will continue to deliver their own adoption services but the RAA will compliment that service, with each Authority retaining their statutory duty and the RAA delivering the service on behalf of the 5 local authorities. Thus the RAA will not replace the adoption service of each member. The service is aiming to be operational by July 2017.
3. The proposal before us now is a 'shared service' with Stockport as the host authority.. The coming together of the 5 Councils into a Regional Adoption Agency (RAA), is one of 19 such collaborations around the country and this particular RAA is referred by Central Government as a Demonstrator RAA – of which there are 5 around the country.
4. The aim of the Demonstrators RAA is that they will pathway the way forward through the various issues and offer a blueprint to the other RAA's as to how they can go about setting up their own RAA's.



5. This RAA here operates as follows:
 - a. Stockport MBC as host authority – they sort out finance, negotiate premises etc
 - b. The RAA will have a strategic board made up of the Council Officers.
 - c. Each Council will second a proportion of its Children’s services staff into the RAA – around 60 in total.
 - d. The RAA will have *no legal identity* and all employee contracts will remain with the original employing authority.
 - e. The RAA will most likely operate from 3 Council premises spread across the 5 councils and lease agreements will be drawn up.
 - f. The desire of each council is that where possible the liability will rest with the authority which has given rise to the loss or has legal responsibility for the loss.
 - g. Any newly post vacancies within the RAA will be responsibility of SMBC and will become SMBC employees.

6. The Adoption Process is as follows:
 - a. In the wider context of adoption the RAA will generate and have a wider pool of families wishing to adopt and they will work with voluntary sector agencies and other public bodies to encourage and ‘recruit’ adoption families.
 - b. The Courts need to approve any nominated family for adoption and clearly they go through a vigorous process before they can become adoptive parents.
 - c. The RAA will family find on behalf of the local authority who has legal responsibility for the child..
 - d. This same Council then needs to ensure the family are suitable, seek a court order for the adoption and then retain an on-going duty to monitor the adoption and make sure all is satisfactory with the placement. The statutory duty to look after the child does not transfer to the RAA or is it diluted in any way. It remains firmly with the placing Council.
 - e. Each council is encouraged through the RAA to use the already listed adoptive families they currently have on their own register of adoptive families.

Flowing from the above we feel the key liability issues are as follows:

1. **Employers Liability** – It is suggested that each Council bear its own EL risk for seconded employees and if it can be shown another Council is responsible for the injury then we would be encouraged to subrogate against negligent party. So if a Stockport MBC employee on secondment to the RAA is sitting in a Manchester CC office and a chair they sit on collapses then SMBC have the EL claim in the first instance but they would want us to subrogate against MCC to try and make a recovery.



2. **Employers Liability – TUPE** – Should any seconded employee decide to bring an employer’s liability claim against Stockport MBC under the TUPE Regulations in line with (1) above the claim will be dealt with by the seconded employees ‘employing authority’ and their insurers and Stockport MBC will be afforded an indemnity from the employing authority in respect of the claim. The indemnity will not apply if Stockport MBC caused the injury to the seconded employee.
3. **Public Liability – Injury to Child** – This PL risk is to remain firmly with the placing Council as they have the statutory duty. Also any claims made by the Adoptive parents - should there be one – would again be with the placing Authority. Even if it was felt the RAA had in some way contributed to the injury – say a negligent profiling of the family – no recovery would be pursued against the RAA as (1) it has no legal identity an (2) the Council in question has representative on the RAA Board etc. and is at least in theory 1/5th of the RAA – so it would be suing itself and with which Council would the RAA claim rest?
4. **Public Liability – Injury to a TP (not (2))** – This just rests with the employing authority of the employee responsible for the injury/damage.
5. **Public Liability – Defective premises and other Occupier Liability claims outside of (3)** – an example of such a claim could be that a member of the public visits one of the regional RAA hubs and trips over a computer cable in the offices – its felt this should rest with the Council who have supplied/own the offices. This is to be reflected in the lease agreements.
6. **Officials Indemnity** – If a claim for pure financial loss is made by the child then this will rest with the placing Authority as per (2) above – i.e. if the adopted family abused them and they placed a claim for prejudice on the job market but no accompanying injury claim – as difficult as this maybe to imagine.
7. **Officials Indemnity** – The RAA will hold and handle sensitive data on both the adoptive families and potentially the child. Suppose this data was negligently shared – e.g. an abused child is adopted and accidentally the RAA reveals the address if the adopted family to the paternal family. This could lead to a claim for moving house and the like from the adoptive family. If the partner authority responsible for the leak can easily be identified then the claim will rest with that authority. If the matter is so complicated it cannot be clearly established which partner is responsible for the leak then the claim will be shared on 1/5th basis equally by all partners, irrespective of liability (non-negligent cover). Stockport as the host authority and their insurers will handle the claim and involve other partners/insurers as appropriate.

We recognise there maybe issues around the SIRO (Senior Information Risk Officer) and there would only be a SIRO if the RAA was a legal entity. The RAA cannot be a data controller without this. The SIRO in each LA would need to take responsibility as data controller and this should be covered in the Partnership Agreement.



Please note that the Integrated Services Agreement (clause 14) says that apart from Employers Liability cover the Host (Stockport) shall be responsible for ensuring that adequate insurance arrangements are in place for the RAA at the time of completing the Agreement. This means that Stockport *will not* have to arrange cover, just merely be responsible for making sure each partner authority has adequate cover in place. Therefore it is the responsibility of each Authority to ensure they have appropriate insurance cover in place to meets its obligations as part of their statutory duties and under the Agreement

For all those Council insured with RMP for casualty risks there are no amendments required to the policy wordings. Please feel free to contact the writer should any of you have any queries regarding the RAA or the contents of this letter.