



Broker Bulletin No. 13 – Regional Adoption Agencies



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In June 2015 in its document titled 'Regionalising Adoption', Central Government announced it wanted all Council Social Services teams to work more closely together over adoption measures so as to ease the red tape, pool vital resources and share more closely their experiences. The solution has been the creation of a number of Regional Adoption Agencies (RAA). The aim is to have the 19 RAA's implemented by 2020. The RAA's are clusters of Authorities that sit near each other geographically and ideally the number involved is around five.

RMP have been involved in a number of these cross-Council relationships and helped the parties involved to identify an insurance solution to the various risks and liabilities which flow from the collaborations. It must be stressed that each RAA is different and hence so can be the insurance solutions. They do however have common themes and below we set out one of the solutions adopted by the authorities in an RAA.

Each RAA will have a lead or host Authority and they will draw up the host agreement by which the Authorities involved will operate and work together. The host agreement will also reflect the desired and agreed insurance solutions.

The creation of the RAA includes:

- 1 Host Authority and host agreement, which is a document drawn up between the host authority and the other participating authorities within the RAA, which sets out the nature of the agreement between the authorities.
- 2 A strategic board made up of officers from the authorities involved.
- 3 Each member of the RAA retains its statutory duty in relation to adoption activities whilst the RAA will actually deliver the adoption service on behalf of the member authorities in accordance with the decisions of the Management Board (Directors of Children's Services (or their nominees) drawn from each of the participating authorities.
- 4 The host authority usually takes the lead and organises finance, premises and other operating requirements.
- 5 Each member will usually second a proportion of its Children's Services staff into the RAA.
- 6 The RAA has no legal identity and all employee contracts usually remain with the original employing authority.
- 7 The RAA most likely will operate from a hub based in the host authority's area – but not a requirement.

8 It is usually the case that each authority would prefer that wherever the liability for an incident will rest with the authority which has given rise to the loss or has legal responsibility for the loss.

9 Any newly created posts within the RAA will be the responsibility of host authority and they will become host authority employees.

The adoption process is as follows:

- 10 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.
- 11 Adoption Panels need to approve any nominated family for adoption and clearly they go through a rigorous process before they can become adoptive parents.
- 12 The RAA will find a family on behalf of the local authority who has legal responsibility for a child within the pool of authorities forming the RAA.
- 13 The RAA will support the social workers seconded to the RAA who support children's cases from point of placement order.
- 14 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 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.
- 15 Each Council is encouraged through the RAA to use families approved by the RAA.

Flowing from the above a number of key issues are generated for insurers to consider. In the RAA we have worked with the following solutions were developed, and these were also agreed with other insurers where one member for the RAA was not a client of RMP.

- 1 **Employers' Liability** – Each Council carried its own employers' liability risk for seconded employees and if it can be shown another Council was responsible for the injury then we would be encouraged to subrogate against the negligent party. So, as an example if an authority X employee on secondment to the RAA is sitting in an authority Y office and a chair they sit on collapses then X have the EL claim in the first instance but they would look to subrogate against Y to try and make a recovery.

2 Employers' Liability – TUPE – Should any seconded employee decide to bring an employers' liability claim against X 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 X will be afforded an indemnity from the employing authority in respect of the claim. This relates to injuries giving rise to a claim occurring prior to the TUPE transfer.

3 Public Liability – Injury to Child – This public liability risk is to remain firmly with the placing Council as they have the statutory duty. Claims made by any adoptive parents 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 and (2) the Council in question has representatives on the RAA Board and would in effect be suing itself.

4 Public Liability – Injury to a TP (not dealt with under point 3 above) – 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 point 3 above – For example, a claim arising from a member of the public visiting one of the regional RAA hubs and trips over a computer cable in the offices. It is felt that this claim should rest with the Council who have supplied/own the offices and should be reflected in any 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 point 3 above.

7 Officials Indemnity – The RAA will hold and handle sensitive data on both the adoptive families and the child. If this data was negligently shared – e.g. an abused child is adopted and accidentally the RAA reveals the address of the adopted family to the birth family.

This could lead to a claim for re-location, moving house and so on 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 equally by all partners, irrespective of liability (non-negligent cover). The host authority and their insurers will handle the claim and involve other partners/insurers as appropriate.

Often the host through the host agreement will be responsible for ensuring that adequate insurance arrangements are in place for the RAA at the time of completing the Agreement. This means that the host only needs to make sure all members to the RAA have insurance – not that it will arrange cover. It is the responsibility of each Authority to ensure they have appropriate insurance cover in place to meet its obligations as part of their statutory duties and under the Agreement

Hopefully all clients and brokers will welcome this communication of how the cover may operate and if there are any questions or further information is required please contact your usual RMP Account Director or Philip Farrar below.

Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

Get in touch

For more information, please contact your Broker, your usual RMP Account Director or Philip below:

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