

# Report to Joint Committee November 13<sup>th</sup>, 2020

## ISSUE 1: Dissolution of ERW

The Legal Agreement between the current partners, signed on the 16<sup>th</sup> July 2014 set up the consortium to 'deliver educational improvements in schools in central and south-west Wales'. The Joint Agreement does not include clauses in regard to the dissolution of ERW however here are references to withdrawal and liabilities. (*Joint Agreement 15.1- 15.5*)

To date, Neath Port Talbot County Borough Council has withdrawn from ERW but still has certain liabilities in relation to finance/redundancies. In addition, Carmarthenshire, Ceredigion and Swansea have given notice in writing to each of the other Authorities that they intend withdrawing from ERW at the end of the 2020/21 financial year i.e. March 31<sup>st</sup>, 2021.

This could result in ERW only having two members i.e. Pembrokeshire and Powys as from April 1<sup>st</sup>, 2021.

The Joint Agreement states-

*15.3 Where any Authority withdraws from this Agreement the Executive Board shall continue to subsist provided at least two Authorities remain as members...*

It seems therefore as neither Pembrokeshire nor Powys have issued notice to withdraw, under the current Joint Agreement they will remain members of ERW and the consortium will continue to exist until either or both issue withdrawal notices. The earliest possible date for Pembrokeshire and Powys to withdraw from ERW is March 31<sup>st</sup>, 2022.

*(15.1 Any Authority may withdraw from this Agreement by giving notice in writing to each of the other Authorities to expire 12 months from the end of the Financial Year in which the notice is given).*

We would need Legal advice on how the Joint Committee could move to dissolve ERW at the end of the 2020/21 financial year as planned (*or alternative agreed date*). It is noted that as Ceredigion are due to leave ERW on 31/3/21, that as Ceredigion hold the ERW Legal and Monitoring Officer functions, that this resource will also end on 31/3/21.

**ACTIONS-** The actions required are outlined in a separate paper entitled 'To make changes to the Joint Legal Agreement in accordance with Clause 25'.

## ISSUE 2: Additional Support

The dissolution of the consortium will involve numerous processes-

- **Human Resources processes-** consultation, confirm in post, redeployment, redundancy.
- **Financial processes-** working with Welsh Government on agreeing budgets for new partnerships.
- **Legal processes**
- **Logistical issues**



Although the proposed functions of possible new partnerships/arrangements are similar to the current consortium it is unclear, as yet the quantum of staff required to deliver those functions and the associated costs. In addition, there will be a greater focus on school to school support and developing a self-sufficient school improvement system. However, current staff will have certain rights to posts within new partnerships/arrangements should there be any and will need to be supported.

In light of the complexity of employment law and the transitioning to new arrangements it is clear that a high level of HR support will be required to ensure that the Joint Committee is compliant. In addition, in light of the recent experience of Neath Port Talbot's withdrawal from ERW, resolution in regard to budget allocations have been complex and have taken considerable time. There will also be substantial legal and logistical issues to deal with as well e.g. office accommodation issues, contracts.

## ACTIONS

1	To secure additional HR capacity to support the change process, it is advised that an additional full time officer, at a senior level, is required. We were notified that an experienced officer from Pembrokeshire was available and that the associated costs could be managed from within current budget due to vacancies. <i>(Agreement from each Leader received on the 7th of October 2020 in regard to this proposal- this needs to be confirmed at the Joint Committee meeting)</i> . External employment legal advice may also be required.
2	The Senior HR Officer to set up a Working Party with HR representatives from each County Council to deliver the agreed changes.
3	The Senior HR Officer to provide advice on the contents of the current employees' contracts in respect to redundancy and calculate the potential cost in order that the Joint Committee can make informed decisions. <i>(Draft Actions/Timeline included in Appendix 1)</i>
4	In light of the complexity of all the HR and Financial processes involved in moving to a new model, and the impact of COVID on the capacity of key officers to progress the work, it is proposed that a September 1st 2021, implementation date is far more achievable than April 1st 2021. This would require all partners who have issued notice of withdrawal to agree to defer this action until the end of August 2021. This agreement may not be forthcoming.
5	ERW can subsist beyond 31/3/20 with only two Authorities however the notice period to withdraw can be reduced to 4 months or less (expiring on 31/3/21) if all authorities consent to appropriate amendments to the Legal Agreement.
6	To instruct external legal advisors in relation to any new partnership/consortia arrangements between (some remaining and former) partners

## ISSUE 3: Role of Joint Committee going forward

The 6 Directors (including NPT) have met to develop proposals and discuss possible future partnerships/working arrangements however it is clear that there will be different solutions for different partners.



As noted in the Joint Committee's July meeting, Pembrokeshire indicated a preference for the Swansea City Deal Footprint and working in the main with Carmarthenshire, Swansea and Neath Port Talbot. However none of these Councils have committed to this arrangement. Ceredigion and Powys are considering their own solutions.

The current Joint Committee's remit, as clarified in the Joint Agreement, is in relation to the current consortium and its functions. The Joint Committee should therefore be focussing on how ERW as an entity is managed as a further three members withdraw.

It is clear that the current Service Level Agreements are between ERW and the constituent authorities, and any new partnership arrangements will need to be managed by the potential partners and legal, HR and financial advice sought to support the delivery of the new entity e.g. Ceredigion Legal Services deliver for ERW but will not have to responsibility for providing advice to a new consortia/partnership.

## ACTIONS

1	Partners who are proposing to work together in a new partnership/arrangement will need to develop and agree the structure of new partnership/arrangements and the posts required to deliver the functions. All current partners will need to work to the same timeline and align plans to minimise liabilities and redundancies.
2	A new consortium/partnership will need to secure appropriate advice e.g. legal
3	A new consortium/partnership will need to be managed by a Shadow Joint Committee until a time when the new body is in place.
4	Statutory officers will need to be appointed to any new consortium/partnership



## Appendix 1- Interim report on draft organisational change process

<b>PURPOSE:</b>	<ul style="list-style-type: none"> <li>To provide members with an overview of the process and timescales involved in undertaking the change process required within the organisation.</li> <li>The intention is to produce a full and detailed Project Plan by 18th December 2020 in order to outline the key issues and challenges to be addressed in order to achieve the desired outcomes.</li> </ul>
<b>KEY DECISIONS REQUIRED:</b>	<ul style="list-style-type: none"> <li>That members note the detail in this report and agree to a further piece of work to be undertaken in order to produce a detailed Project Plan as outlined above.</li> <li>That members further agree to the report author initiating discussions with the relevant officers in order to address the three issues outlined in the NOTES section below.</li> </ul>
<b>REASONS:</b>	<ul style="list-style-type: none"> <li>In order to achieve the dissolution of ERW together with the setting up of a new organisation whilst complying with all statutory requirements under current employment law with dates and partners to be confirmed.</li> </ul>

The purpose of this report is to provide members with an overview of key dates and actions required in order to achieve the desired organisational change relating to the dissolution of ERW and the creation of a new organisation. The following detail gives an initial indication of the timelines and actions required in order to achieve the desired outcome:

<b>DATE</b>	<b>ACTION- to dissolve ERW</b>
<b>13th Nov 2020</b>	<ul style="list-style-type: none"> <li>Joint Committee approval in principle of agreed actions</li> </ul>
<b>27th Nov</b>	<ul style="list-style-type: none"> <li>Initial Trade Union (“TU”) consultation and consideration of feedback (NOTE: Pembrokeshire County Council Change Management Protocol to be followed)</li> </ul>
<b>18th Dec</b>	<ul style="list-style-type: none"> <li>Finalise Project Plan (NOTE: project management process to be utilised)</li> </ul>
<b>2021</b>	
<b>31st Jan</b>	<ul style="list-style-type: none"> <li>Agreement of functions, structure and budget.</li> </ul>
<b>31st Jan</b>	<ul style="list-style-type: none"> <li>TU consultation on structure and possible redundancy selection criteria.</li> <li>Consider feedback (up to 14th Feb –as 2 weeks required).</li> </ul>
<b>15th Feb</b>	<ul style="list-style-type: none"> <li>Commence consultation with staff (and TU’s) - minimum statutory period of 30 days required. This will include any redundancy consultation if applicable.</li> <li>In parallel, invite voluntary redundancy expressions of interest - 2 week application required. (There is no requirement on the employer to agree to any expressions of interest unless they are within the interest of the business).</li> </ul>
<b>15th March</b>	<ul style="list-style-type: none"> <li>Requirement to consider all feedback received (2 weeks required).</li> </ul>
<b>5th April</b>	<ul style="list-style-type: none"> <li>Internal recruitment to structure including compulsory redundancy selection process if applicable.</li> <li>Options will be - Slot &amp; Match/Ring fenced selection/ open recruitment.</li> <li>An Appeals Process for redundant staff will also be required (approx. 2 weeks).</li> </ul>
<b>Week comm 24th May</b>	<ul style="list-style-type: none"> <li>Statutory deadline for issuing redundancy notices. External recruitment to posts to be undertaken, if applicable.</li> </ul>
<b>1st June</b>	<ul style="list-style-type: none"> <li>Work with LA’s on redeployment opportunities for redundant staff if applicable.</li> <li>Issue new employment paperwork to all staff for the new organisation.</li> <li>Deal with any outstanding staff/TU issues.</li> <li>Develop Induction Programme for new organisation.</li> </ul>
<b>1st September</b>	<ul style="list-style-type: none"> <li>Induction of staff into new organisation and deal with residual issues.</li> </ul>



## NOTES

In addition to the above timeline, Members are asked to note the following issues that have not yet been included in the above process, but will be included in the final Plan:

- Legal advice has not been factored into the process as yet. It is understood that Ceredigion will work with the report author in order to advise on the steps required to achieve the dissolution of ERW, in conjunction with respective Heads of Legal of constituent Authorities. This will not include employment law advice. Also that Swansea Legal department will advise on the process involved for setting up the new organisation.
- There is no reference in the above timeline to the recruitment of the Managing Director/Chief Officer, or the most senior officer in the new organisation. Given that the successful candidate for such a role may be a serving Headteacher or Deputy, in order to comply with notice requirements for Headteachers, it will be necessary for the successful candidate to resign from their current post as of 30th April 2021 in order to take up post in the new organisation with effect from 1<sup>st</sup> Sept 2021. With that in mind, recruitment will need to commence no later than the beginning of March.
- There will also be the requirement to develop the branding/marketing and communications relating to the new organisation prior to its inception which will require specialist advice and support.

Legal YES	Finance YES	Risk Management Issues YES	Staffing Implications YES
<p><b>Legal</b></p> <p>Given the sensitivity of the detail contained within the final Plan it is considered that confidentiality is maintained and that parts of the report will be considered as exempt information.</p>			
<p><b>Finance</b></p> <p>It is not yet known what the financial implications will be as a result of this change process. However, as outlined above, budget issues will need to be addressed at an early stage in the process.</p>			
<p><b>Risk Management</b></p> <p>It is imperative that the process is undertaken within the context of statutory regulations as laid down in current employment law.</p>			
<p><b>Staffing Implications</b></p> <p>It is not yet known what the exact staffing implications will be as a result of this organisational change. However, as stated above, it is essential that there is compliance with all legal requirements involved in such a change process.</p>			

