

**CYNGOR SIR POWYS COUNTY COUNCIL.**

**CABINET EXECUTIVE**  
**Date: 15<sup>th</sup> December 2020**

**REPORT AUTHOR:** Head of Legal & Democratic Services

**REPORT TITLE:** Deed of Variation of Legal Agreement for  
School Improvement through Regional Working  
(ERW)

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**REPORT FOR:** Decision

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**1. Purpose**

- 1.1 For Cabinet to consider the Variation of the Legal Agreement to enable interim services to be provided to NPT, for remaining Authorities to withdraw and for the orderly dissolution of ERW.

**2. Background**

- 2.1 ERW is an alliance of six local authorities created to deliver school improvement services across Mid and South West Wales. ERW is governed by a Joint Committee constituted by a Legal Agreement.
- 2.2 In March 2019, Neath Port Talbot Cabinet resolved to withdraw from the ERW regional consortium, enabling Neath Port Talbot to withdraw from the consortium on the 31<sup>st</sup> March 2020. Similarly in March 2020, Swansea, Carmarthenshire and Ceredigion all issued notice to withdraw from the regional consortium with effect from 31<sup>st</sup> March 2021. This leaves Powys and Pembrokeshire as the two remaining members of regional consortium.
- 2.3 On the 13<sup>th</sup> November 2020, the ERW Joint Committee considered two reports on the future of ERW. The Committee proposed changes to the ERW Legal Agreement subject to approval being obtained from each of ERW's local authorities and a formal letter dated 17<sup>th</sup> November 2020 has been served on Powys in this respect (**Appendix 1**).
- 2.4 The first report was to facilitate provision of agreed services to Neath Port Talbot schools during 2020/21 and the Joint Committee agreed to recommend proposed changes to the Legal Agreement to enable ERW to provide Neath Port Talbot schools with access to agreed services as detailed within the relevant report, subject to the assurance of no costs falling on ERW (save for legal costs incurred in amending the Legal Agreement). It was noted that there would be a need to allow the preparation of a separate legal agreement between ERW and NPT.

2.7 The second report considered by the Joint Committee was to: (i) facilitate dissolution/termination of the ERW Consortium, (ii) address any subsequent liabilities/indemnities of all present (and former) Authorities and (iii) facilitate a reduced notice of withdrawal period to 3 months.

### **3. Advice**

- 3.1 Each Cabinet will therefore need to consider the proposed variations to the Legal Agreement to (i) enable interim services to be provided to NPT, and (ii) to allow Powys and Pembrokeshire to withdraw and for the orderly dissolution of ERW.
- 3.2 In accordance with Clause 25 of the Agreement, ERW can recommend changes to the Legal Agreement by giving notice to each authority. Each authority shall then, on receipt of a notice, use all reasonable endeavours to consider within 6 weeks of such receipt, whether to accept the recommendation. If all the authorities agree to the recommended changes, a memorandum of variation shall be prepared ... on behalf of each authority and appended to the Agreement.
- 3.3. The draft variation proposals to date in relation to the above reports are contained in the draft Deed of Variation (**Appendix 2**). This includes an amendment to clause 15.1 in order to reduce the withdrawal notice period from 12 months to 3 months. Since the Joint Committee meeting, alternative wording has been suggested to achieve the intended effect and this wording is shown in italics in **Appendix 2**. The draft also proposes a new clause 15.6 to facilitate withdrawal, address liabilities, indemnities and costs.
- 3.4 The draft variation proposals have not (yet) been agreed by respective Heads of Legal/Monitoring Officers and it is likely that further drafting will be required prior to final signature of the Deed of Variation. Cabinet will need to consider whether to delegate power to serve notice to withdraw from ERW broadly using the enclosed format (**Appendix 3**) and if so, whether to do so by 31<sup>st</sup> December 2020 to enable the Legal Agreement “to determine” (i.e. for ERW to be dissolved).
- 3.5 The current proposal by the Joint Committee is that termination should take place at the end of the 2020/21 financial year (i.e. 31<sup>st</sup> March 2021). This timeline may change depending on the agreements reached by respective Leaders about outstanding arrangements, liabilities and indemnities. In order for Cabinet to withdraw and for this to be effective from 31<sup>st</sup> March 2021 rather than 2022, that notice must be issued by 31<sup>st</sup> December 2020 (if the wording of the amended draft Deed of Variation is agreed).

#### **4. Resource Implications**

- 4.1 The main financial implications for Powys County Council would result from a failure to approve the cabinet recommendations. The scale of the risk is currently unknown, but if all authorities leave the regional arrangement, the costs of dissolution of the service should be borne by all partners. If Powys fails to endorse this cabinet report there is a risk that it could remain as the only authority member of ERW, and could then be liable for the cost of dissolution of the service. The cost of such a dissolution will be dependent upon the number of staff who remain at the point of dissolution and any compensation resulting from the termination of their employment.
- 4.2 Currently, PCC contributes £81,000 to the ERW budget. Upon dissolution of ERW this contribution would not need to be made and would need to be used to fund Powys to facilitate some of the services currently provided by ERW.
- 4.3 Because of the economies of scale associated with being in a six authority partnership, PCC has had access to services whose fixed costs are distributed across all authorities, leading to economies of such joint working. These economies will be lost to Powys upon the dissolution of ERW.
- 4.4 The significant resource implication is caused by the need to replace the services currently offered by ERW – which involve statutory and non-statutory school improvement functions, and a significant level of regional grants' management and accountability. Funding discussions are continuing with Welsh Government and the Schools' Service Finance Resource Model (FRM) for 2021-22 includes an amount of £513,000 for the development of a Secondary School Improvement Team.
- 4.5 Powys CC will need to agree a way forward for the delivery of its services – which will require a significant resource to secure a full service. Those services include a range of expertise in wellbeing, curriculum planning and delivery, leadership development, subject specialisms for secondary schools, the training and induction of new teachers and support staff, HEI partnership and active educational research, regional support for pupil development grant and children who are looked after, engagement with Qualifications Wales and examination bodies, partnership working with the other 3 regions in Wales on shared development of the workforce and curricular materials and much else.
- 4.6 It is currently estimated that if the current ERW shared budget is re-distributed to its component authorities, Powys might be able to expect funding in the region of £800-900k. The services outlined above will need to be delivered and will require agile approaches if all the component parts of a school improvement system are to be delivered.

- 4.7 Currently, it would appear that the resources will need to be allocated to some Powys-only initiatives (in partnership with our schools) which may require some sourcing of external expertise some commissioned activities from the existing regional services across Wales to benefit, where possible, from established expertise and their economies of scale some partnership working within the Mid Wales footprint, where sourcing some expertise might be mutually beneficial for both authorities. This might be particularly helpful with some functions such as leadership development with the National Academy for Educational Leadership and the statutory induction and development processes for new teachers and their initial teacher education.
- 4.8 Given the scale of challenge around the improvement of secondary education across Powys, there will be significant challenges to ensure that the lost benefits of inter-authority working are compensated for in our new approaches. Securing effective support for all aspects of school improvement will be challenging, but the service has submitted a time-limited proposal for a designated budget to support a secondary improvement strategy for the next 3 years.
- 4.9 In addition to this, Powys CC will have to bear a share of the potential liabilities relating to redundancy costs of the 35 staff currently employed by ERW (with Pembrokeshire County Council being the host employer), most of whom have full employment rights. The HR lead for ERW has indicated that the total redundancy costs would be in the region of £1.5 million, shared between the six original signatory authorities to the Inter-Authority Agreement. It is anticipated that these liabilities would be shared between the 6 authorities based on the formula used to distribute ERW funding, so the exposure to Powys should be no more than around £250,000. Discussions are ongoing around a potential successor consortium (not involving Powys) which may significantly reduce the potential redundancy costs, as some staff may transfer across. The alternative to leaving ERW would be for Powys to continue as the only remaining authority which would mean that Powys would be liable for all staff costs, including the potential redundancy costs set out above.
- 4.10 The Head of Finance (s151 Officer) comments as follows: “I note the wider resource and financial implications set out above. Dissolution / termination of the ERW Consortium will minimise the direct financial risks to the authority and is the most prudent approach, notwithstanding the need to replace the services currently provided by ERW.”

## **5. Legal implications**

- 5.1 Legal : The recommendation can be supported from a legal point of view

5.2 The Head of Legal and Democratic Services (Monitoring Officer) has commented as follows: “I note the legal comment and have nothing to add to the report”.

## **6. Recommendation**

6.1 To agree changes to the ERW Legal Agreement to facilitate provision of agreed services to Neath Port Talbot schools during 2020/21 (as set out in the draft Deed of Variation - **Appendix 2**).

6.2. To agree that changes are made to the Legal Agreement, to: (i) facilitate dissolution/termination of the ERW Consortium, (ii) Address any subsequent liabilities/indemnities of all present (and former) Authorities and (iii) facilitate a reduced notice of withdrawal period to 3 months (as set out in the draft amended clause 15 - **Appendix 2**).

6.3. That authority be delegated to the Head of Legal and Democratic Services to make any further changes to the draft proposals to vary the Legal Agreement in order to achieve the aims set out in paragraph 1.1 of the report , following discussion with the other ERW Authorities and to enter into any documentation necessary to implement any of the recommendations in this report and to protect the Authority’s interests.

6.4. That authority be delegated to the Chief Executive , in consultation with the Cabinet Member for Education and Property to issue notice of withdrawal in line with the Deed of Variation.

6.5 Reason for Recommendation: To respond to a formal letter from ERW in respect of proposed changes to the ERW Legal Agreement.

**Background Documents:** None

**Appendices:**

**1 ERW Letter**

**2 Draft Deed of Variation**

**3 Draft Withdrawal Letter**

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Senior Responsible Owner: Dr Caroline Turner
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## APPENDIX 1 ( letter from ERW 17.11.20)

Dear Director/Chief Education Officer,

**Re: Variations to Agreement dated 16 July 2014 to constitute a Joint Committee to deliver educational improvements in schools in central and south-west Wales**

On 13 November 2020, the ERW Joint Committee considered two reports on proposed changes to the ERW Legal Agreement subject to approval being obtained from each of ERW's Local Authorities. The reports outlined that amendments were required to the Agreement so as to facilitate provision of agreed services to Neath Port Talbot schools during 2020/21 and to facilitate dissolution/termination of the ERW Consortium.

Clause 25 of the Agreement provides that the Executive Board (defined as the body appointed by the Joint Committee on behalf of the Consortium, the responsibilities of which are set out in Schedule 4 to the Agreement) in consultation with the Joint Committee may recommend changes to the Agreement by giving notice to each Authority. Each Authority shall, on receipt of a notice, use all reasonable endeavours to consider within 6 weeks of such receipt, whether to accept the recommendation. If all the Authorities agree to the recommended changes, a memorandum of variation shall be prepared for execution on behalf of each Authority and appended to the Agreement.

Please see attached a draft deed of variation for consideration by your Authority setting out proposed variations to the Agreement. Please can you revert with confirmation that either the recommended changes are acceptable or not or if you consider any amendments are required to the draft deed of variation.

Please accept this letter as formal notice pursuant to clause 25 of the Agreement as detailed above.

Yours sincerely,

E.D. Gareth Morgans

**APPENDIX 2**

**DATED**

**DEED OF VARIATION**

**TO AGREEMENT DATED 16 JULY 2014 TO CONSTITUTE A JOINT COMMITTEE TO  
DELIVER EDUCATIONAL IMPROVEMENTS IN SCHOOLS IN CENTRAL  
AND SOUTH-WEST WALES**

between

- (1) CARMARTHENSHIRE COUNTY COUNCIL  
AND  
(2) CEREDIGION COUNTY COUNCIL  
AND  
(3) CITY AND COUNCIL OF SWANSEA  
AND  
(4) PEMBROKESHIRE COUNTY COUNCIL  
AND  
(5) POWYS COUNTY COUNCIL**

This deed is dated [DATE]

## **Parties**

(1) **CARMARTHENSHIRE COUNTY COUNCIL** of County Hall, Castle Hill, Carmarthen SA31 1 JP ("Carmarthenshire")

(2) **CYNGOR SIR CEREDIGION COUNTY COUNCIL** of Neuadd Cyngor Ceredigion, Penmorfa, Aberaeron, Ceredigion, SA46 0PA ("Ceredigion")

(3) **CITY AND COUNCIL OF SWANSEA** of Civic Centre, Oystermouth Road, Swansea SA 1 3SN ("Swansea")

(4) **PEMBROKESHIRE COUNTY COUNCIL** of County Hall, Haverfordwest, Pembrokeshire SA61 1 TP ("Pembrokeshire")

(5) **POWYS COUNTY COUNCIL** of County Hall, Llandrindod Wells, Powys LD1 5LG ("Powys")

together referred to as the Parties or individually, the Party, howsoever the context requires.

## **BACKGROUND**

- (A) The Parties together with NEATH PORT TALBOT COUNTY BOROUGH COUNCIL of Civic Centre, Port Talbot SA 13 1 PJ ("Neath Port Talbot") are party to an agreement to constitute a Joint Committee to deliver educational improvements in schools in central and south-west Wales dated 16 July 2014 (**Agreement**), a copy of which is attached as **Error! Bookmark not defined.Error! Reference source not found.** to this deed].
- (B) Neath Port Talbot, in accordance with clause 15.1 of the Agreement, gave notice in writing to the Parties to withdraw from the Agreement which took effect on 31 March 2020. The Joint Committee were asked by Welsh Government to consider including schools within the geographical area of Neath Port Talbot in some of the programmes managed regionally by Education through Regional Working ("ERW") in order that Neath Port Talbot schools would have access to key national initiatives.

- (C) Carmarthenshire, Ceredigion and Swansea have issued withdrawal notices of intention to withdraw from the Agreement, effective from 31 March 2021. Powys and Pembrokeshire have not given notice to withdraw to date. The Joint Committee at a meeting on 13 November 2020 considered two reports on proposed changes to the Agreement subject to approval being obtained from the Parties. The Joint Committee agreed to the proposed changes to the Agreement to enable access to Neath Port Talbot schools and variations to facilitate termination of the Agreement. Consequently, the parties wish to amend the Agreement as set out in this deed with effect from [[DATE] **OR** the date of this deed] (**Variation Date**).

## **Agreed terms**

### **Terms defined in the Agreement**

In this deed, expressions defined in the Agreement and used in this deed have the meaning set out in the Agreement. The rules of interpretation set out in the Agreement apply to this deed.

#### **1. Variation**

- 1.1 With effect from the Variation Date the Parties agree the following amendments to the Agreement so that the Agreement is read to include the following wording:

1.1.2 The Parties agree that the Consortium under the direction of the Joint Committee and the Executive Board can provide the following services to Neath Port Talbot for the period from 1 April 2020 to 31 March 2021:-

- Innovation & QI Schools Quality Improvement
- Engaging Non Pioneers
- Professional Learning - Pioneer Schools
- Initial Teacher Education Partnership Pilots
- Initial Teacher Education Part time & work based
- Non-pioneer Cluster funding
- Higher Education Institutions Accreditation Manager funding
- Higher Level Teaching Assistants
- National Professional Qualification for Headship programme
- Newly Qualified Teachers programme

- Emerging Leader Programmes e.g. Middle Leaders

1.1.3 The Parties agree for the Consortium to receive grant funding from the Welsh Government in respect of Neath Port Talbot's allocation of funding in relation to the Regional Consortia School Improvement Grant ("RCSIG") for the specific services listed above and Education Workforce Council for the Newly Qualified Teachers programme. Where appropriate, the Consortium will distribute the funding to Neath Port Talbot and the schools within their geographical area subject to a deduction in respect of administration charges associated with the provision of the services accessed and distribution of the grant funding. The Parties agree that any funding distributed to Neath Port Talbot from the Consortium will be subject to Terms and Conditions as set out in the grant award letters from Welsh government to ensure value for money and assess outcomes. Any monies unspent or incomplete work for the purpose of which it has been distributed would need to be repaid to the Consortium by Neath Port Talbot.

1.1.4 The Parties agree for the Consortium to invoice Neath Port Talbot in respect of the administration charges associated with the provision of the services and distribution of the grant funding.

1.1.5 The Parties wish to record that as Neath Port Talbot have withdrawn from the Agreement, reference to Authority or Authorities and Consortium within the Agreement shall not include a reference to Neath Port Talbot save that Neath Port Talbot shall remain liable for the obligations, costs and indemnities referred to in the Agreement and accrued at the date of Neath Port Talbot's withdrawal from the Agreement.

1.1.6 The Parties agree the following variations to clause 15 of the Agreement where deletions to the original Agreement are shown in struck through text and additions are shown in underlined text.:-

(A) ~~15.1 Any Authority may withdraw from this Agreement by giving notice in writing to each of the other Authorities to expire 12 months~~ 3 months ~~from the end of the Financial Year in which the notice is given.~~

*Any Authority may withdraw from this Agreement by giving at least 3 months' notice in writing to each of the other Authorities*

(B) Insertion of new clause

15.6 Where all of the Authorities have given notice to withdraw from this Agreement, the Agreement will be determined and the Joint Committee and the Executive Board shall cease to exist at the end of the Financial Year in which the last notice to withdraw takes effect and the Authorities shall remain liable for the following costs in equal proportions:-

15.6.1 the operational costs calculated to the date of termination; and

15.6.2 costs arising as a consequence of the indemnities referred to in the Agreement including Clauses 10.2, 13.3 and 15.2;

15.6.3 the cost of any redundancies consequent upon the termination; and

15.6.4 any other costs properly incurred in connection with this Agreement or its termination.

1.2 Except as set out herein, the Agreement shall continue in full force and effect.

**2. Governing law**

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**3. Jurisdiction**

3.1 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The COMMON SEAL of CYNGOR SIR )  
CEREDIGION COUNTY COUNCIL )  
was hereunto affixed in the presence of:

Corporate Lead Officer  
Legal & Governance Services

Executed as a Deed by affixing )  
the COMMON SEAL of )  
CARMARTHENSHIRE COUNTY COUNCIL )  
In the presence of

Executed as a Deed by affixing )  
the COMMON SEAL of )  
PEMBROKESHIRE COUNTY COUNCIL )  
In the presence of

Executed as a Deed by affixing )  
the COMMON SEAL of )  
POWYS COUNTY COUNCIL )  
In the presence of

Executed as a Deed by affixing )  
the COMMON SEAL of )  
CITY AND COUNCIL OF SWANSEA )  
In the presence of

### APPENDIX 3

DRAFT

To the Directors of Education  
Carmarthenshire, Ceredigion, Pembrokeshire and Swansea

Dear Sir,

In accordance with clause 23.6 the Agreement dated 16th July 2014 to Constitute a Joint Committee to Deliver Educational Improvements in Schools in Central and South West Wales ("**the Agreement**") and pursuant to Clause 15.1 of the Agreement (as amended by the Deed of Variation dated ..... ) I am formally writing to give notice that this this Authority will withdraw from ERW with effect from 31st March 2021. This is to enable the dissolution of the aero regional consortium in the agreed time scale

I confirm that I have sent a copy of this letter to the Chair and CEO of ERW and to the Directors of Education for the other ERW Authorities.

Yours faithfully