Herefordshire Council

Decision maker:	Cabinet member finance and corporate services
Decision date:	Friday, 11 January 2019
Title of report:	Amendment to Hoople pension admission agreement
Report by:	Head of management accounting

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose and summary

To amend the admission agreement between Herefordshire Council, Hoople Ltd and Worcestershire County Council, which will inform the preparation of the 2018/19 financial statements, in relation to the pension deficit of previous council employees transferred to Hoople Ltd

Accounting for pension liabilities is a complex area and the council has sought independent expert advice in this area.

Recommendation(s)

That:

Further information on the subject of this report is available from
Audrey Clements, email: audrey.clements@herefordshire.gov.uk

(a) **the admission agreement between Herefordshire Council, Hoople Ltd and Worcestershire County Council (as administering authority to the Worcestershire County Council Pension Fund) be amended in relation to pension liabilities so that Herefordshire Council is liable to the Fund for pension liabilities directly (under the terms of the admission agreement) rather than Hoople Ltd being directly liable. The effect of this will be that a 'flow through' agreement is put in place in relation to Hoople Ltd's pension liabilities.**

Alternative options

1. The alternative option is to not change the admission agreement ; this report is to inform on the impact of the admission agreement change.

Key considerations

2. The admission agreement is proposed to be updated to include the pension deficit of Hoople Ltd based on the actuarial valuation assumptions as at 31 March 2018. The impact of this change would be to increase the councils pension deficit by £2.9m (1%) as shown below:

	31.03.18 valuation excluding Hoople Ltd	31.03.18 valuation including Hoople Ltd	Change
Pension deficit	£225.1m	£228.0m	£2.9m

3. In previous financial years the pension deficit has been split by the actuarial valuers between Hoople Ltd and Herefordshire Council, this updated accounting policy would remove the need for this additional calculation with all pension deficit/surplus allocated to Herefordshire Council at each triannual valuation, the next tri-annual valuation is due 31 March 2019.

4. The council prepared group accounts with Hoople Ltd, as its subsidiary undertaking, in 2017/18. The Council is required to produce group accounts to reflect the significant ownership in third party companies. The group accounts included a balance sheet that reflected both the council's and Hoople Ltd pension deficit position. This change would show the combined deficit position in the core council financial statements.

5. At the last tri-annual valuation, as at 31 March 2016, a fixed pension contribution rate of 15.2% was agreed for Hoople Ltd. The proposal in this report to amend the admission agreement would be reflected in a new fixed contribution rate for Hoople Ltd from 1 April 2019, set by the pension actuaries to include contributions for the deficit. Accounting for pension costs on a contributions paid basis would be reported in Hoople Ltd financial statements.

Community impact

6. To ensure clear and transparent processes are in place to govern how resources of the council are effectively managed supports the council's corporate plan objective to manage finances effectively and to demonstrate one of the council's values, namely to be open, transparent and accountable.

Equality duty

7. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

   A public authority must, in the exercise of its functions, have due regard to the need to -

   (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

   (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

   (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

Resource implications

9. The pension deficit valuation will be updated and reflected in the 2018/19 financial statements for this accounting policy change, actual pension deficit costs will continue to be incurred by both Hoople Ltd and Herefordshire council as reflected in each bodies ongoing budget assumptions. The reported pension deficit in the council accounts will increase by £2.9m, Hoople will continue to contribute to the deficit through the % contribution rate set by the actuaries.

Legal implications

10. In summary, the proposal is to change the current position so that the council (rather than Hoople) is contractually liable for Hoople's pension liabilities (the "**Proposal**").

11. Whilst the statutory liabilities will remain with Hoople as it is the 'Scheme employer' for the purposes of the Local Government Pension Scheme Regulations 2013 (as amended) ("**LGPS Regulations**"), amending the admission agreement would allow the contractual position to be altered so that the council (rather than Hoople) is ultimately liable for Hoople's pension liabilities.

12. The wording in Regulation 62(7) of the LGPS Regulations allows the Fund to take any circumstances peculiar to an employer into account when determining their contribution rate. Therefore, if a 'flow through' agreement was entered into between the council and Hoople then the Fund could take that agreement (and any resulting improvement on the strength of the employer covenant) into account when determining the contribution rate. In principle, the Fund could, when setting the contribution rate for Hoople, therefore effectively treat Hoople's pension liabilities as those of the council.

13. The Proposal could be achieved contractually by amending the admission agreement so that the Fund pursues the council for ongoing pension liabilities directly (as set out in that amended admission agreement). Under this route, the Fund would be bound by the agreement reached (ideally the Fund would contractually commit to treating Hoople's pension liabilities as those of the council).

14. If the admission agreement were to terminate or if Hoople were to cease to employ active members in the Fund then an exit payment would be triggered under the LGPS Regulations. This would result in a payment becoming due to the Fund if there was a deficit in relation to the pension liabilities. If the Proposal is implemented then the council would be liable for the exit payment under the terms of the 'flow through' agreement. As part of the updates to the admission agreement, the council could seek to agree wording so that:

   a) in the event that there is a deficit in the Fund, the deficit is not payable on demand, but is subsumed by the council and paid back over time in accordance with a revised rates and adjustments certificate for the council; and

   b) in the event that there is a surplus in the Fund, the surplus would be retained or paid for the council's benefit.

Risk management

15. The decision not to amend the accounting policy change does not result in new additional risks, the pension deficit valuation will continue to fluctuate based on the underlying assumptions used at each triannual valuation point.

16. From a pensions law perspective, the risks and opportunities are set out in the table below, along with their consequences and any mitigating actions.

Risk / opportunity	Consequence / mitigation
1. Hoople has the power to exercise discretions that could increase the pension liabilities that are payable (for example, in relation to early retirement decisions, etc).	1. The council ownership and board membership mitigates this risk. The council should include wording in the updated admission agreement to avoid a situation whereby Hoople could exercise its discretion to increase members' benefits without consequence (as the council would be funding the additional liabilities).
2. The fund, as a third party, will need to agree to the amendment to the admission agreement and would need to agree to any further amendments to the admission agreement in future.	2. An alternative option is to enter into a separate contractual arrangement between the council and Hoople only. However, the fund being bound to the agreement reached is a benefit that, arguably, outweighs this risk as the Fund would be contractually recognising the arrangement.
3. In the event that there is a surplus in the Fund if Hoople were to cease to employ	3. This opportunity means that, while the

any active members of the LGPS, the admission agreement could be amended so that the surplus would be retained for the council's benefit.	council would take the risk of there being a deficit in relation to Hoople's pension liabilities, the council would retain the benefit in the event that there was a surplus in the fund.

Consultees

17. Hoople Ltd board have been consulted and are supportive of this update.

18. There has been continued engagement with the external auditor who have suggested this approach be taken.

19. The political group leaders were consulted and no comments were received.

Appendices

None.

Background papers

None identified.