

<b>Meeting:</b>	<b>Cabinet</b>
<b>Meeting date:</b>	<b>Thursday 30 April 2020</b>
<b>Title of report:</b>	<b>Treatment of West Mercia Energy pension liability</b>
<b>Report by:</b>	<b>Cabinet member finance and corporate services</b>

## **Classification**

Open

## **Decision type**

Non-key

## **Wards affected**

(All Wards);

## **Purpose and summary**

Herefordshire Council, together with Worcestershire County Council, Telford & Wrekin Council and Shropshire Council, is one of the member authorities (the 'Owning Authorities') of West Mercia Energy (WME) Joint Committee, formerly known as West Mercia Supplies. At the point of sale of the West Mercia Supplies stationery division (WMS) in 2012, the existing pension deficit relating to the former WMS staff was retained within the continuing WME business and is overseen by the WME Joint Committee.

The West Mercia Energy Joint Committee formally approved a request to the Owning Authorities to take direct responsibility for this pension deficit liability on the 24 September 2019. Having undertaken discussions via their respective senior Finance Officers, the Owning Authorities are each seeking approval to take on this liability, which is proposed to be achieved by the transfer of this pension deficit to a newly created 'employer body' within the Shropshire County Pension Fund ('WMS Pension') managed and overseen by a new 'WMS Pension Joint Committee' comprising the same Owning Authorities

## **Recommendation(s)**

**That:**

- (a) Cabinet, on condition that the Executives of Worcestershire County Council, Telford & Wrekin Council and Shropshire Council agreeing to the same recommendations, agrees:**
- a. To remove the responsibility for the discharge of its function in relation to the pension deficit liability in relation to former WMS employees (including Compensatory Added Years Benefits) as identified in this report from the business of the WME Joint Committee with effect from 1 April 2020;**
  - b. To allocate the pension deficit liability identified in recommendation a above to a new employer within the Shropshire County Pension Fund, called ‘WMS Pension’;**
  - c. To establish a joint committee pursuant to section 101(5) of the Local Government Act 1972, with Worcestershire County Council, Telford & Wrekin Council and Shropshire Council known as the WMS Pension Joint Committee and delegate responsibility with effect from 1 April 2020 to the WMS Pension Joint Committee to discharge the functions of Herefordshire Council relating to the pension deficit liability from former WMS employees (including Compensatory Added Years Benefits) as set out in Appendix A allocated to the WMS Pension employer within the Shropshire County Pension Fund;**
  - d. To approve the proposed governance arrangements set out in Appendix A, and that the Council’s appointed Executive Members to the WMS Pension Joint Committee shall be the Leader of the Council and the current Council representative(s) on the West Mercia Energy Joint Committee;**
  - e. To delegate authority to the Chief Finance Officer (Section 151) to progress and agree the arrangements as set out in this report, including a relevant payment mechanism and finalise a Joint Agreement for the WMS Pension Joint Committee incorporating the terms set out in Appendix A, in consultation with Section 151 Officers from the remaining Owning Authorities.**
  - f. To approve the treatment of the WME asset share to be fully funded with effect from 1 April 2020 using IAS19/FRS102 actuarial assumptions with the resulting additional cost of this funding option allocated to the WMS Pension employer within the Shropshire County Pension Fund.**
  - g. To delegate authority to the Chief Finance Officer (Section 151) to agree the final figures, of which estimates are set out in the resources implications section of this report, and in consultation with the Section 151 Officers from the remaining Owning Authorities.**

## Alternative options

1. In developing the recommended proposal, the Owing Authorities have considered alternative options with their respective merits and disadvantages as follows:
  - a. Each authority could make a direct payment to Shropshire County Pension Fund to remove the pension deficit. This option was considered and discounted at the time of the sale of the WMS business due to the significant financial cost to the Owing Authorities. This opinion and position has not changed in the intervening years since the sale and is not considered value for money.
  - b. The WMS pension liabilities and assets could be separated from the WME business and allocated in equal shares to the four Owing Authorities via the transfer of the liabilities and assets to the respective Local Government Pension Schemes that each Owing Authority participates in. In principle, 50% of these WMS liabilities and assets would be transferred to the Worcestershire Pension Fund, to become the financial responsibility of Worcestershire Council and Herefordshire Council. The remaining 50% being retained within the Shropshire County Pension Fund (but allocated to the employer's liabilities of Shropshire and Telford & Wrekin, rather than Shropshire on behalf of WME) and being the financial responsibility of Shropshire Council and Telford & Wrekin Council. An application (signed by the four Owing Authorities) to the Secretary of State for Communities and Local Government for a "Direction" could allow the transfer of the relevant proportion of WMS assets and liabilities (being the responsibility of Worcestershire County and Herefordshire Councils) from the Shropshire Fund to the Worcestershire Fund with the balance remaining in the Shropshire Fund (being the responsibility of Shropshire and Telford and Wrekin Councils). It should be noted that the original intention of these Directions was to allow the transfer between Funds of an employer's entire pension assets and liabilities, so there was no guarantee that the Direction would be granted for a partial transfer such as this. Calculations by the Shropshire County Pension Fund actuaries would determine a subset of members which make up (as near as practically possible) four blocks of 25% of the WMS liabilities. Formal agreement by the Worcestershire Pension Fund actuaries to the figures and proposed allocation of membership between the two funds would be required before transfer of appropriate pensioner payroll, membership records and asset share from the Shropshire County Pension Fund to the Worcestershire Pension Fund, and splits to the relevant employers. This option would have resulted in one off costs of up to £80,000 and included the risk that the Secretary of State would not approve the necessary direction. On the basis of the discussions between officers of the four Owing Authorities it is not recommended that this option is pursued as it does not represent value for money.

## Key considerations

2. The WME Joint Committee formally approved a request to the Owing Authorities to take direct responsibility for this pension deficit liability on the 24th September 2019. Having undertaken discussions via their respective senior Finance Officers, the Owing Authorities are each seeking approval to take on this liability, which is proposed to be achieved by the transfer of this pension deficit to a newly created 'employer body' within the Shropshire County Pension Fund ('WMS Pension') managed and overseen by a new 'WMS Pension Joint Committee' comprising the same Owing Authorities.

3. WME's risk register identified a potential risk in bidding for future contracts while carrying the pension deficit liability for former WMS employees on its balance sheet. It was considered that potential customers will review the financial position unfavourably (through the accounts) of WME in assessing their bid. In order to facilitate WME in bidding for future contracts, the aim is to put it in a position where, at least initially, it is not carrying a pension deficit (and certainly not relating to former WMS employees) within the Shropshire County Pension Fund. To achieve this the liabilities relating to former WMS employees would need to be removed from the WME business and instead more clearly allocated to the Owing Authorities. In practice this proposed change would make very little difference to the liabilities of the Owing Authorities which are currently responsible for their share of the net liabilities of WME because it is a council company which includes the WMS pension liability.
4. Worcestershire County Council, Herefordshire, Shropshire and Telford & Wrekin Councils have for many years been constituent members of a Joint Committee undertaking procurement activity. This business was originally called West Mercia Supplies, but following the sale of the stationery supplies business it was renamed West Mercia Energy (WME). Each of the four Owing Authorities have delegated their functions in relation to the procurement of energy and utilities to the Joint Committee and each Owing Authority has two votes each on the WME Joint Committee.
5. The WME Joint Committee operates under the Joint Agreement, the latest version of which was approved by the Owing Authorities and for Herefordshire Council this was made by the Cabinet member corporate strategy and budget on 26 March 2015. The Joint Agreement sets out how the Joint Committee operates and that the four Owing Authorities are jointly liable in equal shares for the liabilities of the Joint Committee and the WME business.
6. On 24th September 2019 the Joint Committee approved recommendations to:
  - a. propose that the four WME Owing Authorities take direct responsibility for the pension deficit liability relating to former WMS employees (including Compensatory Added Years Benefits) and WME with effect from 1st April 2020; and
  - b. subject to the formal decisions of the four WME Owing Authorities to agree the above, to remove the pension deficit liability relating to former WMS employees (including Compensatory Added Years Benefits) and WME from the WME Balance Sheet from 1 April 2020.
7. It is a decision for each Owing Authority, rather than the WME Joint Committee, to agree that the Owing Authorities create a new Joint Committee and employer to take responsibility for the current WMS pension deficit so that it can be removed as a liability from the WME business.
8. It is a decision for each Owing Authority, rather than the WME Joint Committee, to remove the responsibility for the pension deficit from WME and the Joint Committee's management and to put in place a new mechanism under which the Owing Authorities take direct responsibility for the current WMS pension deficit.
9. The aim of the proposal identified in this report is to create a new Joint Committee and employer to take responsibility for this so that it can be removed as a liability from the WME business to put WME in a position where, at least initially, it is not carrying a

pension deficit (and certainly not relating to former WMS employees) under the Shropshire County Pension Fund. To achieve this, the overall aim is that the liabilities relating to former WMS employees will be separated from the WME business and instead more clearly allocate the liability to the Owing Authorities.

10. The West Mercia Energy Joint Committee formally approved a request to the Owing Authorities to take direct responsibility for this pension deficit liability on the 24th September 2019. Having undertaken discussions via their respective senior Finance Officers, the Owing Authorities are each seeking approval to take on this liability, which is proposed to be achieved by the transfer of this pension deficit to a newly created 'employer body' within the Shropshire County Pension Fund ('WMS Pension') managed and overseen by a new 'WMS Pension Joint Committee' comprising the same Owing Authorities.
11. Discussions between the Owing Authorities have identified a viable and value for money proposition to remove the pension deficit liability from WME and allocate it jointly to the Owing Authorities by creating a second Joint Committee to manage the WMS pension liabilities.
12. It is proposed to introduce the above proposal from 1 April 2020. In doing so, the arrangements would be based upon the latest triennial actuarial valuation (as at 31 March 2019, and implemented across all employers from 1 April 2020) improving the quality of the information used at the agreed date of separation of the WME/WMS liabilities, and also removing the need for further actuary costs, as these are absorbed within the existing workload.
13. The overall proposal is that the WMS pension liabilities and assets will be separated from the allocation of the WME employer and allocated to a new employer (called WMS Pension) within the Shropshire County Pension Fund.
14. Given that the main issue in WME bidding for contracts is the appearance of its (and the WMS) pension deficit in its accounts, the recommendation is that the asset shares should be determined so that WME is initially fully funded (at the point that the position is crystallised), with the remaining assets (and the historic WMS liabilities) being allocated to the four Owing Authorities. This approach will transfer a slightly larger deficit to the Owing Authorities which will marginally increase their respective employer's liability calculation of the new WMS Pension employer. Furthermore, it is recommended that WME's pension liabilities should be fully funded on actuarial assumptions used for accounting purposes using IAS19/FRS102 actuarial assumptions. This would leave a larger deficit to the Owing Authorities which will further increase their respective employers liability calculation of the new WMS Pension employer. These implications are identified in the resource implications section of this report.
15. The proposal would result in the removal of the WMS Pension liability from WME's Balance Sheet by transferring the responsibility for the liability to the four Owing Authorities, to be managed through the establishment of a new employer, whilst retaining the assets and liabilities within the Shropshire County Pension Fund. This resulting new employer would manage the WMS pension assets and liabilities within Shropshire County Pension Fund via a Joint Committee.
16. The setting up of a new WMS Pension employer which is the responsibility of a new Joint Committee established by the Owing Authorities would enable any pension deficit to be separately identified, separately valued and monitored, and allocated to the new WMS Pension employer with the Shropshire Fund so that it remains the joint liability of the four

Owning Authorities in a reasonably cost-effective way without the transfer of risk between any of the parties.

17. The proposal would require formal arrangements to be drawn up between the four Owning Authorities, for each authority to agree to establish a new Joint Committee and make appropriate delegations to the Committee for the management of its share of the WMS pension liability. To reduce administration, it would be proposed to replicate the membership and governance arrangements of the WME Joint Committee as far as possible for the WMS Pension Joint Committee so that the same Members sitting on WME Joint Committee could potentially also sit on a new WMS Pension Joint Committee and meetings of the two Joint Committees could be diarised to take place at the same venue and running one after the other. Herefordshire's member representatives are currently the Cabinet member infrastructure and Cabinet member economy and corporate services. The WME Treasurer would take the role of Treasurer for WMS Pension Joint Committee.
18. The governance arrangements for a new WMS Pension Joint Committee would be based, as far as possible, on the existing WME Joint Agreement. The WMS Pension Joint Committee would have delegated authority from each Owning Authority to be responsible for any WMS Pension Liability, and historic WMS Compensatory Added Years Benefits. Appendix 1 contains the draft governance arrangements proposed for the WMS Pension Joint Committee.
19. The risks associated with retaining a pension liability for WMS remain with the Owning Authorities and are not influenced in any way by the removal of responsibility for the deficit from the WME Joint Committee and resulting change in accounting treatment.
20. Deficit contributions of the Owning Authorities would be subject to the same triennial valuations and treatment whether they are the responsibility of and accounted for within the WME Joint Committee or separately by the Owning Authorities under a new WMS Pension Joint Committee.
21. The pension liability arising from employees within WME (the WME Pension Liability) would continue to be shown within WME Accounts, with the expected IAS19/FRS102 calculations and (should this be necessary in the future) a deficit recovery plan drawn up and subject to the existing scrutiny and consideration by the business and the WME Joint Committee. The expectation is that these calculations would be significantly less impactful on the Balance Sheet, although the risk remains that an impact could be seen nonetheless.

## **Community impact**

22. This is a recommended back office procedural change that is expected to have a minimal community impact.

## **Equality duty**

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.
23. 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

24. Worcestershire County Council, Herefordshire, Shropshire and Telford & Wrekin Councils have for many years been constituent members of a Joint Committee undertaking procurement activity. This business was originally called West Mercia Supplies, but following the sale of the stationery supplies business it has been renamed West Mercia Energy (WME).
25. At the point of sale of the WMS division (April 2012) the business had a pension fund deficit as identified in the actuarial valuation of the Shropshire County Pension Fund. The deficit related, in the main, to WMS employees whose employment was transferring as part of the sale. To deal with this position, the Owing Authorities had the following options:
- a. Transfer the WMS pension deficit to the buyers of the WMS business.
  - b. Use the capital receipt from the sale, plus other Owing Authority funds (if necessary) to clear the WMS pension deficit retained by the Owing Authorities.
  - c. Allocate liability for the WMS pension deficit to the continuing WME business and continue to make deficit recovery payments from any WME profits delivered.
26. During the sale process it was identified that option (a) was unviable. Furthermore, the Owing Authorities concluded that they did not wish to forego a capital receipt from the sale of WMS as represented by option (b) which would also have necessitated a revenue payment from owning authorities to make up the shortfall between the value of the capital receipt and the larger pension deficit. As a result, the WMS pension fund deficit was retained by the Owing Authorities and the liability to meet that deficit was allocated to the continuing WME business. A deficit recovery plan was agreed with Shropshire County Pension Fund (SCPF) and revised every three years in line with the actuarial valuation. The latest valuation is being conducted at the time of writing, as at 31 March 2019, with contribution changes for all employers within the fund from 1 April 2020. In the 2019/20 Financial Year, the budget for WME deficit recovery payment is £193k.
27. While the direct financial implications of this arrangement within the WME Profit and Loss Account currently are affordable, the impact on the business balance sheet is significant. The pension liability is in excess of £6m which is not offset to any great extent by the business' fixed assets (minimal) or working balance (generally in the order of £1m). This results in WME producing a negative balance sheet each year, with net liabilities of around £5m each year.
28. In adopting Option C above, the resulting capital receipt from the sale of WMS was split evenly between the owning authorities and it is appropriate, therefore, to continue to apply this methodology to the Pension Liability calculation. In the intervening years no formal methodology was followed for the deduction of the pension liability in relation to

the owners shares of WME profit. As a result, the actual deduction for each authority would have been incorporated within the distribution of surplus calculation and would have varied slightly from an equal share. There will be no backdating of the methodology, however, to adjust for this. Upon implementation, this arrangement will have a positive financial implication for WME (removing the WMS pension deficit from the balance sheet and removing the WMS pension deficit payments from the Profit and Loss Account) and there will be a reciprocal negative financial implication for the Owning Authorities. The Owning Authorities will be required to cover the cost of 25% of the WMS pension deficit payment annually. The Owning Authorities will, however, benefit from marginally increased distributions from WME as a result of the pension deficit payments for WMS no longer being charged to the WME Profit and Loss Account.

29. Given that the main issue in WME bidding for contracts is the presence of the pension deficit in its business accounts, there is a presumption that the asset shares should be determined so that WME is initially fully funded (at the date the WMS pension liabilities are separated), with the remaining assets (and the historic WMS liabilities) being allocated to the four owning authorities in equal shares. This will potentially transfer a slightly larger deficit to the Owning Authorities. Furthermore, there is a choice as to whether WME's pension liabilities should be fully funded on ongoing actuarial assumptions or on actuarial assumptions used for accounting purposes, as the two will generate different answers. The Shropshire County Pension Fund actuaries have been asked to calculate the approximate figures using both approaches, and the details below provide an estimate of how the final figures may look. The figures have been calculated as at 31 March 2019 as part of the 2019 actuarial valuation of the Shropshire County Fund, but will in due course need to be updated to the date of separation. Given that IAS19/FRS102 liabilities have increased over recent months, as a result of falls in bond yields, it is likely to need a slightly higher asset allocation to WME (resulting in a slightly lower asset allocation and therefore slightly increased deficit on an ongoing valuation basis for WMS):

Table 1: WME fully funded on illustrative ongoing valuation assumptions:

	<b>WME</b>	<b>WMS</b>
<b>Illustrative ongoing valuation position</b>		
Assets	0.93	9.36
Liabilities	0.93	10.79
<b>Surplus/(deficit)</b>	<b>-</b>	<b>(1.43)</b>
<b>Estimated IAS19/FRS102 position</b>		
Assets	0.93	9.36
Liabilities	1.64	14.96
<b>Surplus/(deficit)</b>	<b>(0.71)</b>	<b>(5.60)</b>



Table 2: WME fully funded on estimated IAS19/FRS102 assumptions:

	<b>WME</b>	<b>WMS</b>
<b>Illustrative ongoing valuation position</b>		
Assets	1.64	8.65
Liabilities	0.93	10.79
<b>Surplus/(deficit)</b>	<b>0.71</b>	<b>(2.14)</b>
<b>Estimated IAS19/FRS102 position</b>		
Assets	1.64	8.65
Liabilities	1.64	14.96
<b>Surplus/(deficit)</b>	<b>-</b>	<b>(6.31)</b>

30. The recommendation would be for the WME asset share to be fully funded using IAS19/FRS102 actuarial assumptions, and therefore the £1.64m asset allocation would form the basis of the figures. This would leave £8.65m worth of assets and £10.79m worth of liabilities (on the Shropshire County Pension Fund's ongoing valuation assumptions) to be allocated to the four Owing Authorities (which would impact on deficit contributions payable, with the accounting deficit feeding through to the owing authorities' balance sheets). The figures should be updated (as far as is reasonably possible) to the agreed date of separation of the WME/WMS liabilities, so that at this "strike date" WME has no surplus or deficit for employer accounting purposes. It is recommended that the final arrangements are implemented in line with these estimates by Shropshire Council Section 151 Officer, in consultation with the Section 151 Officers from the remaining Owing Authorities.
31. By ensuring WME is fully funded under IAS19/FRS102 assumptions, it will actually be in surplus under on-going actuarial assumptions. As a result, WME may not be required to physically pay annual pension contributions to Shropshire County Pension Fund under this arrangement, as the actuarial surplus relating to former service would offset the on-going employers' contributions for WME staff. While this may look unusual in isolation, the overall position is unchanged and there are no overall financial implications arising from this.
32. The Owing Authorities would be required to make separate contributions for the WMS pension liabilities allocated to the new employer to cover deficit contributions and Compensatory Added Years Benefits. A separate contribution from each Owing Authority is required as the removal of the deficit from WME means that a share of the liability effectively sits with each Owing Authority to be funded by them, rather than being funded directly by WME from its income, prior to any calculation and distribution of profits. Consequently, the WME profits distribution would be proportionately higher as a result of the pension deficit contribution no longer being accounted for through this mechanism. The payment mechanism for the proposal would need to be agreed between the Owing Authorities' Section 151 Officers.

33. To implement the proposal there have been limited one-off costs of £7k in 2019/20, as the majority of preparatory costs have been absorbed within the existing agreements between WME, Shropshire Council, Shropshire County Pension Fund and Mercer (pension actuary). There will be on-going costs associated with the managing and administration of a second Joint Committee and the cost of preparing a set of accounts for that new Joint Committee. These are estimated to be £5k pa and would be split between the four Owning Authorities and recovered via the agreed payment mechanism.

Table 2: On-going Financial Implications estimate:

Details	Total Cost (£)	Cost to Herefordshire Council (£)
Joint Committee	5,000	1,250
Deficit repayment	175,000	43,750
Compensatory Added Years Benefits	31,500	7,875
<b>Total Costs</b>	<b>211,500</b>	<b>52,875</b>
Change in WME distribution of surplus	(206,500)	(51,625) <sup>1</sup>
<b>Net impact</b>	<b>5,000</b>	<b>1,250</b>

34. It would be possible for the four Owning Authorities to make payments in advance (annually or three years in advance at each triennial valuation). This would generate a saving over the three year period, but would have a cashflow implication for the Owning Authorities. Given the complexity of the arrangements, it may be necessary for all four Owning Authorities to agree to adopt the same mechanism, and this would be reviewed following each triennial valuation. This decision would form part of the delegation in recommendation g.

## Legal implications

35. Part VI of the Local Government Act 1972 and Part 1A, Chapter 2 of the Local Government Act 2000 (as amended) makes provision for local authorities to establish joint committees. Provided that the functions to be exercised are executive functions, further to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, it is a matter for the respective Cabinets to determine the establishment of an executive joint committee and to agree the executive functions to be delegated to that joint committee. Every member of the joint committee must be a member of their nominating council's Cabinet.
36. The functions to be delegated to the WMS Pension Joint Committee are not functions relating to pension or related payments due to local authority employees pursuant to the Superannuation Act 1972 which are identified in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as Council (not executive) functions. Each Owning Authority's obligation to make payments to the relevant Pension Fund in respect

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<sup>1</sup> Shown here for illustrative purposes using 25% distribution to each owning authority but will vary between authority and each year based on the distribution of surplus calculation.

of current or past employees for which they are responsible may therefore be exercised by the Owing Authority's executive and delegated accordingly to a joint committee.

## **Risk management**

37. To achieve implementation by April 2020, it is necessary for all four Owing Authorities to approve the proposal set out in this report. Failure of any Owing Authority to meet the necessary timescales or gain the approvals will result in the proposal not progressing and WME continuing to operate with and bid for contract opportunities showing a negative balance sheet each year, with net liabilities of around £5m each year due to the pension deficit liability.
38. There is still a technical (albeit unlikely) risk that the retained WME pension liability could, under unfavourable market and/or actuarial assumptions and circumstances still deliver a negative balance sheet position for WME in the future.
39. The risks in relation to the actual pension liability of Herefordshire council remain as they currently are and will not vary as a result of implementing the recommended back office procedural change.

## **Consultees**

40. None

## **Appendices**

- Appendix 1      WMS Pension Joint Committee – Principles of the Joint Agreement

## **Background papers**

- None identified