

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

CABINET

17 March 2020

**Joint Report of the Chief Executive and the Director of Education,
Leisure & Lifelong Learning**

ERW REGIONAL SCHOOL IMPROVEMENT CONSORTIUM

Matter for Decision

Wards Affected: All

SECTION A

Purpose of Report

1. Final advice on this Council's proposed withdrawal from the Regional School Improvement Consortium (ERW) and possible options on future collaboration models (see Section B below).

Background

2. On 27 March 2019, the Cabinet agreed (see Appendix 1) that the Council should give the required one year's notice to quit the consortium under the terms of the Joint Committee Agreement (JCA). This was for a number of reasons set out in that report – primarily to do with poor governance, poor quality and poor value for money.
3. At the time, officers gave an undertaking to provide further advice before the expiry of that notice period on 31 March 2020. Essentially, this report addresses the fundamental question as to whether there has been any material change in the intervening period to cause the Council to change its position.
4. Officers would contend that the answer is “No” for the reasons set out below – grouped together under broadly the same headings as previously.

Governance

5. The previous report set out our concerns over the lack of transparency on the distribution of funding through ERW and other matters. Despite several further meetings of the Joint Committee and numerous discussions in other forums, our fundamental misgivings remain.
6. For example, at the time of writing, ERW has still to bring forward a realistic and balanced budget proposal for 2020/21 – nor as things stand, is it possibly going to have an agreed budget before the commencement of the new financial year. The matter was due to be discussed at a meeting of the Joint Committee on 14 February; but in the absence of any papers – and therefore any proper basis for such decisions - the meeting was cancelled. The Chair of the Joint Committee then resigned.
7. Officers have been made aware of reports (though unsubstantiated) of potentially irregular and unauthorised action leading to significant liabilities which the local authorities could be invited to fund in the event of any termination of the JCA.
8. It has been made clear to all parties that we will only meet our commitments under the JCA in respect of such liabilities where there is a clear audit trail of proper decision making.
9. We also believe there to be a more fundamental flaw in the governance arrangements. In theory, the consortia are creatures of local government through the Joint Committee structure. The Welsh Government described consortia in these terms in recent evidence to the Children, Young People and Education Committee in the National Assembly¹:

“Regional consortia continue to work, on behalf of local authorities, to lead, orchestrate and co-ordinate improvement in schools across the region. They have also been

¹ <http://www.senedd.assembly.wales/documents/s98558/CYPE5-06-20%20-%20Paper%201.pdf>

instrumental in helping to drive forward wider reform and improvements over the last few years.

Local authorities retain statutory responsibility for promoting high standards in their schools. They exercise this responsibility by delegating school improvement activities to regional consortia, who benefit from the greater capacity and efficiencies they can draw upon by working across a region; this has been crucial in supporting the delivery of curriculum reform. At the same time, having themselves established the regional consortia, local authorities have the responsibility to ensure that regions are delivering a high quality service to their schools.”

10. We have a very different view. In our view, the reality is that Welsh Government seek to direct consortia through funding whilst the statutory responsibility for education remains with individual local authorities. In practice, this means that WG/consortia frequently bypass local authorities and that has a direct bearing on statutory responsibilities. Fundamentally, in the view of officers, having *de facto* control and accountability in different places doesn't work.

Quality

11. Although some work has been done to improve ERW's organisation and structure over the past year, our fundamental reservations again remain. These reflect what we have been consistently told by Head Teachers/senior staff in our schools and the teaching unions (who have campaigned against the “bureaucracy” of consortia²). Officers have double checked with both of these key stakeholders in recent weeks and their views remain unchanged. Part of the issue here is the sheer geographical size of the ERW area and the travel time involved for Head teachers and senior leaders in our schools traversing the area.
12. There have been claims from some quarters that the consortia are directly responsible for any improvement in school performance

² <https://www.walesonline.co.uk/news/education/huge-sums-allocated-education-wales-15827055>

across Wales. The frequently quoted OECD report from 2016³ did endorse the concept of regional consortia; but it contained little or no analysis of how they were actually performing nor is it the eulogy of consortia that is sometimes implied. There is also very recent emerging evidence (from the Welsh Government itself) of the lack of impact of the consortia in other parts of Wales⁴ highlighting the scope for “*confusion and an insufficiently ‘joined-up’ response*” in the context of school improvement.

13. In addition, measuring improvement over the medium term in Wales is difficult or next to impossible because several performance benchmarks are deployed and they frequently change; but there is no real independent evidence of this improvement on any scale nor, where it has taken place, that it can be attributed to ERW e.g. the improved number of schools in the “green” categorisation.
14. In 2016, Estyn inspected ERW, judging “*improving quality*” only to be adequate. The following year, Estyn revisited ERW and found that overall progress in meeting the four recommendations made the previous year, had “*been relatively slow*”. The Joint Committee also issued instructions in 2017 to improve governance, financial arrangements and the alignment between the consortium and its constituent local authorities; but very limited progress has been made subsequently.
15. As Estyn pointed out, the “*limited progress*” towards ensuring that school improvement services addressed the performance of schools causing concern, particularly in the secondary sector, means that there is a failure to provide an acceptable standard of education for pupils as a consequence of what Estyn described as “*insufficient identification of success criteria*”.
16. All of this is in sharp contrast to Estyn’s conclusions when they inspected this authority in late 2017 and the range of publicly available Estyn inspection reports on our schools.⁵ Estyn judged all aspects of education provision in Neath Port Talbot to be good,

³ The Welsh Education Reform Journey: A rapid policy assessment (OECD: 2016) - <http://www.oecd.org/education/The-Welsh-Education-Reform-Journey.pdf>

⁴ <https://gov.wales/written-statement-merthyr-tydfil-county-borough-council-1> plus Appendix.

⁵ <https://www.estyn.gov.wales/>

noted that officers know their schools well and that senior officers and elected members share a clear vision for ensuring effective education provision in the County Borough.

17. In terms of success criteria, reference might usefully be made to the first schools categorisation exercise in 2014/15 where five of the six ERW authorities were ranked in the top half across Wales. By 2019/20, however, ERW occupied three of the bottom five rankings in the same table. This is not continuous improvement by any benchmark that we recognise.
18. Rather it is the teachers in our schools who are sustaining good outcomes with support from this Council's challenge advisors and other central services. The latest categorisation exercise had only one of our schools in the amber category and none in red. Across the region, the position in the primary sector has improved; but ERW still has today the same number of secondary schools in the "red" category that it had on its inception in 2012 and categorised in 2014. The position at local authority level is also broadly similar based on publicly available Estyn reports. In other words, there is nothing by way of a step change to be attributed to the consortium, which it is reasonable to expect eight years on.
19. We are not opposed to regional working *per se* – it is the current arrangements and the collective inability to reform them that are the issue. This Council has been proactive in supporting improvement in other local authorities in the region, particularly Pembrokeshire and Powys, and we are currently engaged with Caerphilly Council, for example, on a developing inclusive support for pupils with social, emotional and behavioural needs.
20. However, the Council has consistently said that regional collaboration must be underpinned by a commissioning relationship that secures rigour and accountability at its core. This was articulated in letters sent from the Chief Executive on 28 February 2018 to ERW's Lead Chief Executive (and forwarded to the Welsh Government) and from the Leader of Council to the Chair of the ERW Joint Committee on 10 October 2018. These representations were ignored.

Financial/Value for Money

21. Even during the worst years of austerity, this Council made a point of prioritising expenditure on schools. Again, the 2020/21 Council budget matches the 4.5% uplift in our overall revenue budget with additional funding for schools. Such is the quantum of funding now being channelled through consortia (some £70m via ERW this financial year), it is reasonable to ask whether this should now be considered as part of the current wider review of how education funding is distributed in Wales⁶?
22. However, despite being very clear with partners that we were not prepared to pull money out of our classrooms to divert additional core Council funds to ERW (beyond the current 40k per annum), those concerns have also been ignored. The current proposal would see our contribution increase to over 100k at the direct expense of the front line. They include a Managing Director post on a salary of over 100k per annum – more than some Directors in the region who hold the statutory responsibility.
23. On a separate financial aspect, there is a school of thought that, if we confirm our withdrawal, this Council will be “punished” for challenging the policy orthodoxy. This could take the form of grant monies currently channelled via ERW being withheld or diverted elsewhere. **We do not believe that there is any legitimate grounds for doing so and it will be open to the Council to mount a legal challenge to any such action via a judicial review should a decision be taken to attempt it.** It was the “National Model for Regional Working” which set out an agreed national approach to school improvement. ERW was the regional agreement to support this policy decision and termination provisions were built into the agreement to reflect that at some point an authority may wish to withdraw.
24. In the absence of such a move, it is a fairly easy administrative task to put in place the necessary arrangements with Pembrokeshire Council (as the lead authority on finance and the grant recipient from Welsh Government) to secure the funding going forward. Alternatively it is open to the Welsh Government to fund this Council directly. In any event, the current “regional”

⁶ <https://gov.wales/school-funding-review>

funding is largely a myth in reality: what actually happens is that the bulk of the funding – based upon pupil numbers in each local authority - goes from Welsh Government to Pembrokeshire and then bounces straight out to individual local authorities and their schools.

SECTION B

Possible Future Arrangements

25. A proposal has been tabled by Ceredigion Council to reconstitute the consortium (in part) on a Dyfed Powys footprint. At the time of writing, it does not seem that this proposal commands universal support within the four authorities concerned - it also directly contradicts the previously agreed idea of moving to a City Deal footprint of those four authorities on skills.
26. This leaves us with four potential options as follows – the first and one of the others not being mutually exclusive:
- A. If Members agree the recommendations below, we would stand alone outside of ERW, at least in the short term; **but if the other authorities agree:**
 - B. We could subsequently join a new consortium based upon the City Deal footprint (Pembrokeshire, Carmarthenshire, Swansea and ourselves). This is perhaps the optimum solution bringing together the economic development and education/skills agenda in a coterminous area; or
 - C. As (B) above – but minus Pembrokeshire; or
 - D. A “West Glamorgan” consortium with Swansea. From an education perspective, this causes us no difficulty as there is already a long history of productive collaboration between the two Councils and their schools, not least because many of our Head teachers and staff have worked in Swansea’s schools – and vice-versa.

27. This report is fundamentally about Option A; **but officers would support either one of B-D and recommendation 2 below reflects that advice**. However, whether this actually happens is dependent upon decisions in the other Councils elsewhere in the region. We understand that Carmarthenshire, Ceredigion and Swansea took/are taking reports to their Executive Board/Cabinets, respectively, yesterday (the 16th), today (the 17th) and on the 19th. We understand that all three propose to serve notice to leave ERW. If there are further developments between the publication of this report and the Cabinet/Scrutiny meeting, officers will provide an oral update.
28. There is one other important point worth highlighting. This Council is the only ERW authority to have given the required notice so far under the Joint Committee Agreement (see the legal implications in Section D below). What this means is that if any or all of the Councils listed in options B-D above are to join with us immediately, the others in the current ERW consortium would have to agree to release them. If not, those concerned would have to give the required one year notice and the earliest any new arrangements could commence would be 1 April 2021.
29. In discussion with the other ERW authorities, we have been clear that we are prepared to support orderly transition arrangements, including ongoing support from our staff on a basis to be determined. However, we have also said that this needs to be done on the basis of precise information on which schools need what support, where from, how often and so forth. It is this sort of transparency and clarity that has been lacking in the ERW Joint Committee. Moreover, we have also raised the issue of how long some of this support will be required. We do not wish to leave any school (anywhere) in the lurch; but on the other hand indefinite intensive support could lead to a dependency upon it – and, arguably, that is already becoming evident in some parts of the region's secondary sector in particular.

Other Developments

30. There is also the prospect that we could be forced back (through legislation) into some sort of similar arrangement in the future

under the proposals for Corporate Joint Committees (CJCs) under Part 5 of the Local Government and Elections (Wales) Bill – see the report to Council on 14 February 2020.

31. Two points arise here:

- The Welsh Local Government Association (WLGA) has set out a number of collaboration principles in this context. To paraphrase, such arrangements should be locally driven; subject to local democratic direction; underpinned by a locally agreed business case; outline mutual benefit, a clear understanding of shared costs with a focus on outcomes and maintain transparent and flexible governance. Currently, ERW fails all of these tests and that identified in the original Welsh Government report in 2013⁷ on the future delivery of education services (which became the consortia) in Wales viz. whether the arrangements led to a clearer sense among teachers, school leaders, governors, local authorities, regional consortia and policy makers of how to improve teaching and learning and raise standards in classrooms in Wales; and
- In the context of CJCs, it is not clear whether the remit would be limited to school improvement (as now) or more widely across the education sphere – with all that this entails in terms of a local authority's statutory responsibilities - one of our major issues with the current arrangements.

32. The immediate point is that any legislation isn't going to be enacted by 31 March, so it is a bridge that we should cross if and when we get to it.

SECTION C

Exploding Myths

33. The Welsh Government is questioning how we can deliver on supporting the curriculum reform agenda outside of ERW. The exchange of correspondence recently between the Education Director and the Chief Executive provides more context – see Appendices 2a and 2b.

⁷ Authored by Robert Hill

34. As we say there, their emphasis on the National Mission is misplaced as consortia now appear to be the main or perhaps only delivery vehicle (why write such a letter otherwise?). However, that is not what the Mission actually says - instead it references a “middle tier” of consortia and local authorities. In addition, the extant National Model governing the consortia’s remit does not even cover these issues because Welsh Government has repeatedly declined invitations to update it in recent years.

35. Thus we do not share the Welsh Government’s confidence that consortia can deliver in this regard. ERW is largely invisible here. Thus set out below is a summary of the infrastructure already in place or planned to support curriculum reform in Neath Port Talbot.

36. Putting to one side all the debate – above - around the consortia’s remit and the National Mission and recognising that curriculum reform is a school-led process, the key point is **how are we (as a local authority) approaching support for our schools to implement the new curriculum with some two years to go before it is due and what are we actually doing on the ground?**

37. Our school improvement approach is based on the following principles. Supporting/developing:

- Highly effective leaders within our schools to identify strengths and areas for improvement plus sharing these strengths and planning effectively for any identified improvements;
- All schools to be highly effective self-improving schools which ensure that all pupils are ambitious confident learners that are, inter alia, healthy and confident individuals and ethical and informed citizens;
- The recruitment and professional development of school leaders at all levels;
- Teaching and learning in all our schools in order to allow all pupils to make the appropriate progress; and

- A collaborative and innovative approach to school improvement through a process of modelling, coaching and quality assuring a school's evaluation.

38. These principles are reflected in our Corporate and business plans and officers have shared the vision of how to create a self-improving system with Welsh Government, Estyn, regional officers and Head teachers.

39. In March 2019, the Council organised a Curriculum Convention in order to bring together professionals to share good practice and to support the development of the curriculum.

40. In September 2019, the Council established a Curriculum Advisory Group (CAG) to encourage, promote and develop collaboration, cluster work, innovation, communication and partnership in relation to curriculum design, development and delivery. The group consists of a cross-section of professionals who help to shape the new curriculum in the County Borough. It meets termly and discusses key information relating to the new Curriculum for Wales. This information is cascaded to our schools and partners through a newsletter and key partners are expected to disseminate the information to the relevant agencies.

41. During core visits by our Challenge Adviser, there are consistent messages given to our schools. These include the need to develop a vision and culture in order to embed the curriculum changes. We support our schools to move towards a purpose lead curriculum which is designed at school level in line with Welsh Government's expectations. The Council has also run a number of workshops in order to support the development of the Curriculum for Wales.

42. In terms of recent results, in three recent school inspections by Estyn, teaching and learning experiences have been judged to be good. This includes praise for providing a broad curriculum for pupils, including recognition of the pioneer work that has supported the development of a new curriculum. Teachers have embraced the opportunity to be at the forefront of curriculum design and have involved pupils particularly well in curriculum planning. Finally, Estyn commented that members of staff reflect well on their practice and are developing creative approaches to learning. The curriculum links pupils' learning to the four purposes of the new

curriculum for Wales well and places a strong emphasis on pupil-led activities.

43. This work is ongoing. Officers have held a series of meetings with senior school leaders during this calendar year, identifying agreed priorities for improvement and a clear commitment to deliver going forward including the allocation of resources to meet the specific needs of our schools such as support for early years and inclusion, areas that are generally outside the remit of the National Model for Regional Working.
44. The Council also has long established processes to commission support and provision. These are subject to local scrutiny and accountability via Elected Members and audit. Wherever necessary, we apply these to commissioning additional support from outside the local authority via external providers. As long as they meet our quality thresholds, regional consortia could bid for contracts to deliver aspects of support and development in the County Borough.
45. The implication from recent Welsh Government comments is that they could invite Estyn to review our capacity (almost as a “stick to beat us with”) if we confirmed our exit from ERW. But in fact, Estyn, the Wales Audit Office and Care Inspectorate Wales are currently conducting an Audit Assurance and Risk Assessment Review of major services including Education.
46. Corporate Directors met with the joint regulatory team on 18 February 2020. Estyn commented that the Council had given a “*strong steer*” to schools on curriculum reform and their wider analysis is summarised in the presentation slide at Appendix 3. Estyn also identified a risk on ERW in these terms: “*Uncertainty re. ERW and future provision for support*”. The Chief Executive’s response was that the bigger risk was staying within the current inadequate arrangements (for all the reasons set out in this report). We were quite clear with Estyn - then and previously - as to the reasons why.

SECTION D

Conclusion

47. Despite two cordial, but inconclusive, meetings (July 2019 and February 2020) between the Leader of Council and the Education Minister, nothing much has changed.

48. Despite our best efforts, it has not proved possible to engage in a substantive dialogue with Welsh Government or the region to resolve concerns that we have been raising for some three years and the Joint Committee apparatus is seemingly as dysfunctional as ever leading to the Chair's resignation last month. For our part, the Council can only objectively and faithfully reflect the feedback we are getting from our front line in the classroom. Our only motivation is the best interests of the children and young people in our schools.

Workforce Implications

49. Nothing additional to the points identified in the previous report.

Legal Implications

50. Again, the previous report outlines the relevant clauses in the JCA which are at issue here. Clause 15.2 provides that in the event notice of withdrawal is made, which is voluntary (i.e. not out of a decision of the Welsh Government), the withdrawing authority will "*indemnify the other Authorities against any lost to the other Authorities arising out of the withdrawal*". However, it is not readily obvious what detriment would apply to the other participants should we leave. As indicated above, it has been made clear to all parties that the Council's position is that we will only meet our commitments under the JCA in respect of such liabilities where there is a clear audit trail of proper decision making.

51. As also indicated above, we do not believe that there is any legitimate grounds for withholding or redirecting grant funding and it will be open to the Council to mount a legal challenge to any such action via a judicial review should a decision be taken to attempt this. It was the 'National Model for Regional Working' which set out an agreed national approach to school improvement. ERW was the regional agreement to support this policy decision. Termination

provisions were built into the agreement to reflect that at some point an authority may wish to withdraw. This Council will continue to ensure that educational requirements are met and all obligations to ensure educational improvement are complied with.

Recommendations

That Members agree that:

1. The withdrawal notice of Neath Port Talbot County Borough Council remain as served on the basis that little or nothing material has changed in the last year to justify the Council rescinding this⁸.
2. The Council enter into one of three options for a new footprint identified in section B above should the other local authorities agree to do so and any legal constraints be removed by mutual agreement.
3. Delegated authority be granted to the Chief Executive and the Director of Education, Leisure and Lifelong Learning, in consultation with the Leader of Council and the Cabinet Member, to take all necessary actions and, enter into all necessary agreements, to complete the withdrawal process and establish successor arrangements either on the basis of one of the options in recommendation 2 or the Council standing alone outside the current consortium, at least in the short term.

Reasons for Proposed Decisions

To finally conclude the Council's position in relation to ERW.

Implementation of Decision

This decision is for immediate implementation.

Appendices

Appendix 1 – Cabinet Report of 27 March 2019.

Appendix 2A – Letter from the Welsh Government Education Director, 7 February 2020

⁸ If Members agree, no further action is required as our Membership will expire on 31 March 2020.

Appendix 2B – Reply from the Chief Executive dated 14 February 2020.

Appendix 3 - Estyn, the Wales Audit Office and Care Inspectorate
Wales: Audit Assurance and Risk Assessment (Education Services).

Background Documents

Report to Council: 14 February 2020: Local Government and Elections
(Wales) Bill.

Letter from the Chief Executive, 28 February 2018 to ERW's Lead Chief
Executive (forwarded to the Welsh Government).

Letter from the Leader of Council, 10 October 2018, to the Chair of the
ERW Joint Committee.

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