

CHESHIRE EAST COUNCIL

Cabinet

Date of meeting: 17 December 2008
Report of: Interim Chief Finance Officer
Title: Nominated Authority, Caretaker Role & Arbitration

1.0 Purpose of Report

- 1.1 The County Council's assets and liabilities, as at 31/03/09, will need to be allocated to the two new Authorities on a fair, equitable and transparent basis.
- 1.2 The balance sheet by its very nature will not be finalised until the County Council's accounts are closed for 2008/09 (September 2009). Hence the 2007/08 balance sheet position has been used as a basis for agreeing the principles by which the assets and liabilities will be distributed. The final numbers will not be known until later, but this in itself does not affect the ability of both organisations to agree a basis of allocation.
- 1.3 The Department for Communities and Local Government (DCLG) has set out guidelines for the process, and a date for local agreement to be achieved by 31st December 2008.
- 1.4 The report to Cheshire East Cabinet on 4th November 2008 set out progress up to that date, decisions required, and areas of work still outstanding in order to comply with the DCLG regulations.
- 1.5 This report provides details of the role of the nominated authority with regard to the Cheshire County Council Closure of Accounts for 2008/09 and the role of a caretaker authority as defined in the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008.
- 1.6 The report also details the arbitration arrangements required by the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 if the local agreement is not achieved by 31st December 2008.

2.0 Decision Required

- 2.1 To agree that Cheshire West & Chester Council is responsible for the Closure of Accounts for Cheshire County Council for 2008/09 and that Cheshire East Council is responsible for the Closure of Accounts for the Districts in the Cheshire East area for 2008/09.

- 2.2 To agree that, in accordance with Regulation 10 of the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008, Cheshire West & Chester, as the Nominated Council, shall hold on trust for itself and Cheshire East Council the reserves of Cheshire County Council up to the date agreed by the successor Councils.
- 2.3 To agree that, in accordance with Regulation 13 of the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008, the arrangements detailed in Section 5.3 are adopted with regard to the role of Caretaker Authority.
- 2.4 To agree that in accordance with Regulation 17 of the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 the organisations detailed in Section 5.4 are identified to arbitrate in the event that an agreement is not reached by 31st December 2008.

3.0 Financial Implications for Transitional Costs

- 3.1 There are no implications for transitional costs in 2008-09 providing that arbitration is not required. In the event that arbitration is required the costs would be split between Cheshire East Council and Cheshire West & Chester Council in an agreed proportion. Existing Finance staffing resources are being allocated to analyse the balance sheet entries and the proposed disaggregation bases.

4.0 Financial Implications 2009/10 and Beyond

- 4.1 The disaggregation of the County Balance Sheet and the aggregation of the District balance sheets form the opening financial position for the new authority. It is therefore very important that the disaggregation is done on an equitable and robust basis to ensure that Cheshire East and Cheshire West & Chester inherit the appropriate balance sheet position.
- 4.2 The balance sheet position for each authority will be finalised following the publication of the Statement of Accounts for each existing authority at the end of September 2009. However, some of the agreements made between the two authorities as part of this exercise will extend beyond this deadline e.g. agreements on the ongoing ownership and management of shared assets.

5.0 Required Procedures

- 5.1 Cheshire West & Chester Council agreed in principle at a meeting of the Executive on 15th October 2008 that it would be responsible for the closure of the Cheshire County Council accounts for 2008/09. It also agreed that Cheshire West & Chester Council and Cheshire East Council are responsible for the closure of accounts for the outgoing District Councils in their respective areas for 2008/09. Cheshire East Council now needs to formally agree to this proposal.

- 5.2 With regard to the Nominated Council required under Regulation 10 of the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 in relation to the holding on trust for both authorities of the Cheshire County Council's financial reserves, it has been agreed in principle that this should be Cheshire West and Chester Council bearing in mind it is proposed that this authority will close down the Cheshire County Council accounts. The reserves of demising District Councils will vest in the Successor Council in whose area that District council is located.
- 5.3 With regard to the designation of 'Caretaker Councils' which may be required to be appointed by the Secretary of State under Regulation 13 of the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 it is proposed that the following approach be adopted where there has been a failure to reach agreement by a date three months prior to 1st April 2009 in relation to property, rights and liabilities of a predecessor council (the 'residual matters'):
- Where the 'residual matter' relates to Congleton Borough Council, Crewe & Nantwich Borough Council and Macclesfield Borough Council then the Caretaker Council shall be Cheshire East.
 - Where the 'residual matter' relates to Chester City Council, Ellesmere Port & Neston Borough Council and Vale Royal Borough Council then Cheshire West & Chester shall be the Caretaker Council.
 - Where the 'residual matter' relates to Cheshire County Council then the Caretaker Council shall be the Shadow/Successor Council in whose area that matter arises or, if land, is situated.
 - In the case of land or other rights or liabilities (for example a countywide contract), which may straddle the boundary of, or relate to an area covering both Shadow/Successor Councils then Cheshire West & Chester Council shall be the Caretaker Council holding such matters on trust for itself and Cheshire East until the matters are agreed or determined following arbitration.
- 5.4 With regard to the identity of a person who Cheshire East and Cheshire West & Chester propose could be appointed by the Secretary of State to arbitrate under Regulation 17 of the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 it is proposed that the nature of the failure to agree should inform the decision as to who should be appointed. It is proposed that:
- In the case of a failure to agree based on the interpretation of the actual provisions of the legislation or the vesting of a right or liability (e.g. a contract) then the individual should be an arbitrator appointed by the President of the Law Society.
 - Where the matter relates to property, then an arbitrator appointed by the President of the Royal Institution of Chartered Surveyors is appropriate.

- Where it is a financial matter concerning calculations for example, of final distributions of reserves, then an arbitrator will be appointed by the Chartered Institute of Public Finance and Accountancy (CIPFA).
- 5.5 A meeting will be held on 19th December 2008 to finalise the agreement of the disaggregation of the Cheshire County Council balance sheet in accordance with the delegation agreed by Cheshire East Cabinet on 4th November 2008. The meeting will be attended by the P&C Portfolio Holders, the equivalent Members from Cheshire West & Chester Council, the S151 Officers and the relevant finance, property and legal officers. This will enable an agreement to be made by 31st December 2008. The outcome will be reported to Cheshire East Cabinet on 6th January 2008.

6.0 Legal Implications

- 6.1 The disaggregation of the County Balance Sheet is being conducted in accordance with the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008. This includes the role of the 'nominated' authority in terms of the vesting of Cheshire County Council reserves and the role of 'caretaker' authority in terms of any residual matters. Both roles are being considered as part of the disaggregation exercise.

7.0 Risk Assessment

- 7.1 If the disaggregation of the County Balance Sheet is in dispute at 31st December 2008, in accordance with the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008, DCLG will take the dispute to arbitration. However, the work that has been described in this report demonstrates that plans are in place to achieve agreement within the required deadline.
- 7.2 Due to the complex nature of this major exercise the allocation of each element of the Balance Sheet requires detailed analysis which causes a risk to the achievement of the deadline and the accuracy of the final position. However, the exercise is being conducted on a planned and robust basis with oversight from the County's 'Honest Broker', the Interim Chief Finance Officers and the relevant Portfolio Holders from each shadow authority.

8.0 Conclusion and Reasons for Recommendation

- 8.1 It is necessary to formally agree the 'in principle' agreement that Cheshire West & Chester is the responsible authority for the closure of the Cheshire County Council accounts for 2008/09. It is also necessary to formally agree that Cheshire East Council is responsible for the closure of accounts for Congleton Borough Council, Crewe & Nantwich Borough Council and Macclesfield Borough Council for 2008/09.
- 8.2 Work is well advanced on the disaggregation of the Cheshire County Council balance sheet and a 'package' of proposals will be available for agreement at

the meeting on 19th December 2008 in readiness to meet the DCLG deadline of 31st December 2008.

- 8.3 In order to demonstrate compliance with the requirements of the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 it is necessary to agree the mechanisms that are required for an agreement to be made between Cheshire East Council and Cheshire West & Chester Council by 31st December 2008 and the mechanisms required if an agreement is not made by 31st December 2008.
- 8.4 A further report will be brought to Cabinet on conclusion of this agreement.

For further information:

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Background Documents:

Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008

Documents are available for inspection at:

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Westfields
Middlewich Road
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