

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **CABINET**

DATE: **TUESDAY, 19 FEBRUARY 2013**

REPORT BY: **HEAD OF FINANCE**

SUBJECT: **MUNICIPAL MUTUAL INSURANCE - TRIGGER OF
SCHEME OF ARRANGEMENT**

1.00 PURPOSE OF REPORT

1.01 To advise members of the significant financial risk associated with the trigger of the Scheme of Arrangement by Municipal Mutual Insurance (MMI)

2.00 BACKGROUND

2.01 In September, 1992 MMI ceased to underwrite new business or renew existing insurance policies. At that time MMI was the principal insurer of 90 to 95% of all local authorities in the UK.

2.02 In order to protect the interests of local authorities and allow MMI to continue to pay claims and achieve a successful run off of the company's liabilities a Scheme of Arrangement was proposed under Section 425 of the Companies Act 1985. The Scheme of Arrangement was subsequently agreed at a meeting of scheme creditors in January, 1994 and became binding on all creditors.

2.03 During the initial scheme period (prior to any trigger event) all liabilities of MMI will continue to be paid in full as and when they fall due. All new insurance claims reported which relate to when MMI were on cover will also continue to be dealt with and where appropriate paid in full.

2.04 A trigger event will occur when the Directors give written notice to the Scheme administrator that they have concluded that there is no reasonable prospect that MMI will avoid going into insolvent liquidation.

2.05 If a trigger event occurs a levy may be imposed on all scheme creditors which since 30 September, 1993 have been paid in excess of £50,000. No levy will be imposed on any scheme creditor in respect of the first £50,000 paid. The raising of a percentage levy will enable MMI to claw back sufficient funds to maintain a solvent run off of the company. However, once a levy has been imposed later payments of claims will be made at a reduced rate.

2.06 The Board of Directors of MMI announced on 13th November 2012 that they had decided to trigger the Scheme of Arrangement due to the fact that there was no other alternative to insolvent liquidation than to take such a decision. From this date, control of MMI passed to the Scheme Administrator, Ernst & Young LLP, who will undertake a financial review of the company and consider the extent to which any levy is to be imposed on scheme creditors.

3.00 CONSIDERATIONS

3.01 Although MMI is now in its 20th run off year, the company continues to receive large numbers of claims particularly in respect of abuse claims, asbestosis, deafness and mesothelioma (a fatal lung condition caused through inhalation of asbestos dust).

3.02 Mesothelioma takes on average between 30 and 40 years for the symptoms to manifest. MMI has been a party to a series of test cases since 2006 designed to create certainty as to which insurer should respond to long tail occupational disease claims where there is difficulty in determining when the injury arises.

3.03 The litigation process finally ended on 28th March 2012 with a ruling by the Supreme Court that MMI as insurer on risk at the time of the original exposure to asbestos dust should deal with current mesothelioma claims. Mesothelioma claims account for 76% of MMI's total liabilities with many new cases likely to be in the pipeline and effectively it is likely that it was this issue alone that necessitated the need to trigger the Scheme of Arrangement.

3.04 The extent of the levy to be imposed and when any payment will fall due is still to be determined. However, most experts believe this will be in the region of 15 to 25% based on MMI's latest set of published accounts which show that liabilities currently exceed assets by 21%. For the former Clwyd County Council this would equate to a potential levy in the range £1.5m to £2.5m which will need to be shared by all the new unitary authorities.

3.05 Discussions are underway with colleagues in affected authorities with a view to agreeing a fair and appropriate way to share the liability. However, one option is that the principle established under the Section 56 agreement (see below) could be adopted in order to share the cost.

3.06 In 1992 the former Clwyd County Council faced with having to make alternative insurance arrangements and risk strategies established the Clwyd Internal Insurance Fund which was used to fund the payment of large deductibles under its Liability and Property insurance policies. On LGR in 1996 an agreement under Section 56 of the Local Government Reorganisation (Wales) Act was made in which it was

agreed that Flintshire would undertake the administration of the Fund and aim to achieve a solvent run off.

- 3.07 It was also agreed that in the event of a shortfall the deficit would be shared between the successor authorities on the basis of population as at 31 March, 1996. Similarly it was agreed that any surplus would be disaggregated between the successor authorities also on the basis of population. Since 1996 the Section 56 agreement has been invoked on two occasions both with regard to a disaggregation of surplus funds and latterly a call for additional funds due to unexpected levels of further claims.
- 3.08 If this basis were to be agreed with other authorities the potential levy for the Council is estimated to be in the range of £0.577m (15%) to £0.962m (25%). This includes potential liability that has also been identified in respect of the former district council's of Delyn (£0.033m - £0.054m) and Alyn & Deeside (£0.014m - £0.023m) which will also fall due on the Council.
- 3.09 Although neither the amount of levy nor the timing are known at this stage, Accounts and Audit Regulations stipulate that adequate provision needs to be made in the 2012/13 accounts. The 2011/12 accounts included a Contingent Liability as at that stage full details were not known. In view of the uncertainty around the amount it is considered prudent to provide for the mid range of potential liability, being £0.770m. It is recommended therefore that an allocation of £0.770m is approved from the contingency reserve in 2012/13 and set aside for this purpose.
- 3.10 There also exists the potential for further calls on scheme members in future years as MMI's exposure to future claims is translated into actual reported claims which will need to be monitored closely.

4.00 RECOMMENDATIONS

- 4.01 Members are requested to:-
- a) Note the significant financial risks associated with the trigger of the Scheme of Arrangement by MMI.
 - b) Approve an allocation of £0.770m from the contingency reserve to provide for the estimated future costs arising from the levy.

5.00 FINANCIAL IMPLICATIONS

- 5.01 The potential levy is estimated to be in the range £0.577m - £0.962m for Flintshire with a recommendation to provide for a mid range figure of £0.770m by way of an allocation from the Contingency Reserve.

6.00 ANTI POVERTY IMPACT

6.01 None.

7.00 ENVIRONMENTAL IMPACT

7.01 None.

8.00 EQUALITIES IMPACT

8.01 None.

9.00 PERSONNEL IMPLICATIONS

9.01 None.

10.00 CONSULTATION REQUIRED

10.01 None.

11.00 CONSULTATION UNDERTAKEN

11.01 None.

12.00 APPENDICES

12.01 None.

**LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985
BACKGROUND DOCUMENTS**

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