

MEETING

GENERAL FUNCTIONS COMMITTEE

DATE AND TIME

MONDAY 9 SEPTEMBER, 2013

AT 6.00 PM

PLEASE NOTE START TIME

VENUE

HENDON TOWN HALL, THE BURROUGHS, NW4 4BG

TO: MEMBERS OF GENERAL FUNCTIONS COMMITTEE (Quorum 3)

Chairman: Councillor Joan Scannell
Vice Chairman: Councillor Wendy Prentice

Councillors

Claire Farrier	Robert Rams	Daniel Thomas
Susette Palmer	Barry Rawlings	

Substitute Members

Jack Cohen	David Longstaff	Lord Palmer
Richard Cornelius	Alison Moore	Agnes Slocombe

You are requested to attend the above meeting for which an agenda is attached.

Andrew Nathan – Head of Governance

Governance Services contact: Maria Lugangira 020 8359 2761

Media Relations contact: Sue Cocker 020 8359 7039

ASSURANCE GROUP

ORDER OF BUSINESS

Item No	Title of Report	Pages
1.	Minutes	
2.	Absence of Members	
3.	Disclosable Pecuniary interests and Non Pecuniary interests	
4.	Public Question Time (if any)	
5.	Members Item (if any)	
6.	TUPE Transfer of the Development and Regulatory Services ("DRS") to Capita (BDRS) Limited	1 - 32
7.	Director Induction and Awareness	33 - 46
8.	Any item(s) that the Chairman decides are urgent	

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Meeting	General Functions Committee
Date	9 September 2013
Subject	TUPE Transfer of the Development and Regulatory Services (“DRS”) to Capita (BDRS) Limited
Report of	Director for Place
Summary	This report relates to the transfer of the Development and Regulatory Services (“DRS”) staff employed within the London Borough of Barnet to Capita (BDRS) Limited. Staff will be transferred in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”). Regulations and the Council’s TUPE Transfer Commitments. Staff currently carrying out non-delegable statutory functions will sign a joint employment contract to come into effect immediately after the TUPE Transfer.
Officer Contributors	Pam Wharfe – Director for Place Jennifer Burt – DRS Programme Manager Alison Clark – DRS Project HR Business Partner Charlotte Graham – DRS Project Manager
Status (public or exempt)	Public
Wards Affected	Not Applicable
Key Decision	Not Applicable
Reason for urgency / exemption from call-in	Not applicable
Function of	Council
Enclosures	Appendix A – Staff Equalities Impact Assessment Appendix B – the Council’s Proposed Measures Letter Appendix C - Capita Symonds’s Proposed Measures Letter on behalf of Capita (BDRS) Limited
Contact for Further Information:	Alison Clark, DRS Project HRBP, on ext 7806

1. RECOMMENDATIONS

- 1.1 To note that Cabinet resolved on 24 June 2013 to the transfer of the Development and Regulatory Services (“DRS”) to Capita (BDRS) Limited.
- 1.2 To note the automatic TUPE transfer of staff in the Council’s DRS to Capita (BDRS) Limited with effect from the service commencement date on 1 October 2013. The Chief Operating Officer will ensure that all relevant information is provided to Capita as required under TUPE.
- 1.3 To approve that, following the TUPE transfer, the relevant posts be deleted from the Council’s staffing establishment.
- 1.4 To note that, following the TUPE transfer, those staff who are currently carrying out non-delegable statutory functions on behalf of the council will be employed on a joint employment contract with Capita (BDRS)Limited and the council.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Business Management Overview and Scrutiny Committee on 3 July 2013. The Committee considered the following decision of the Cabinet meeting held on 24 June 2013 and asked questions of the Leader of the Council and Cabinet Member for Environment in respect of the following:

Decision Item:	Subject:
5	Report of the Cabinet Members for Resources and Performance, Environment, Housing, Safety and Resident Engagement, Customer Access and Partnerships and Planning and Regulatory Services Development and Regulatory Services (DRS): Selection of the Preferred and Reserved Bidder as the council’s Strategic Partner to form a Joint Venture to deliver the DRS Services

Resolved that:

- (1) Following consideration of the call-in from Councillor Alison Moore, the decision relating to the Development and Regulatory Services (DRS): Selection of the Preferred and Reserved Bidder as the council’s Strategic Partner to form a Joint Venture to deliver the DRS Services is not referred back to the Cabinet Resources Committee for reconsideration.
- (2) The Committee be provided with details of the Lessons Learnt Logs for each stage of the DRS project.
- (3) The Committee be provided with details of which types of services provided by the Joint Venture would be subject to VAT, Capital Gains Tax or Corporation Tax.

2.2 Cabinet on 24 June 2013 (Decision item 5)

Development and Regulatory Services (DRS); Selection of the Preferred and reserved Bidder as the Council's Strategic Partner to form a Joint Venture to deliver the DRS Service: Resolved that:

- (1) That Cabinet note the outcome of the evaluation stage of the Development and Regulatory Services project and accept Capita Symonds' final tender (including subsequent clarifications) as the preferred bid, with reference to the Full Business Case (Appendix A), Equalities Impact Assessment (Appendix B), List of Principal Legislation (Appendix C) and Evaluation Scores (Appendix D exempt);
- (2) That Cabinet approve the recommended reserve bidder (including subsequent clarifications), as EC Harris;
- (3) That Cabinet note the comments raised by the Budget and Performance Overview and Scrutiny Committee;
- (4) That Cabinet instruct the officers to take all necessary action to complete the formalities for the finalisation and execution of the contract;
- (5) That Cabinet approve the council forms a Joint Venture Company (Capita (BDRS) Limited with Capita Symonds Ltd and instruct officers to take all necessary actions; and
- (6) That Cabinet approve the addition of £6.4m of investment to the capital programme.

Please refer to section 10 on Background Papers.

2.3 Cabinet Resources Committee on 14 December 2011

(Decision item 5)

Development and Regulatory Services (Business Case Update and Shortlist for Dialogue 2): Resolved that:

- (1) The Cabinet Resources Committee approved the recommended Development and Regulatory Services (DRS) shortlist of two bidders for stage 2 of the competitive dialogue process.
- (2) The recommended shortlist is: Capita Symonds Ltd and the EC Harris / FM Conway consortium. They achieved the highest two scores from the evaluation of the outline solutions provided at the end of the first stage of competitive dialogue.
- (3) The Cabinet Resources Committee noted the updated Development and Regulatory Services business case.

2.4 Cabinet Resources Committee on 28 March 2011 (Decision item 5)

Resolved that:

- (1) That the Committee approve the Development and Regulatory Services business case, in order for the Council to begin the competitive dialogue process, following the previously approved placing of the OJEU notice.

2.5 Cabinet, 29 November 2010 (Decision item 6) – Resolved that:

- (1) The One Barnet Programme Framework is approved
- (2) The funding strategy for One Barnet implementation costs, as set out in paragraph 6 of the Cabinet Member's report, is approved.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

3.1 The DRS project and Capita Symonds's Final Tender have agreed to make a significant contribution to the Council's corporate priorities.

3.2 The three priority outcomes set out in the 2013 – 2016 Corporate Plan are:

- Promote responsible growth, development and success across the borough;
- Support families and individuals that need it – promoting independence, learning and well-being; and
- Improve the satisfaction of residents and businesses with the London Borough of Barnet as a place to live, work and study.

3.3 The One Barnet programme has three overarching aims:

- A new relationship with citizens;
- A one public sector approach; and
- A relentless drive for efficiency

3.4 The benefits committed by Capita that contribute to these aims are described in section 4 of the Full Business Case.

4. RISK MANAGEMENT ISSUES

4.1 Risks will be actively managed in line with the corporate risk management approach.

4.2 The key risks specifically in respect of the transfer of the DRS staff are as follows:

ID	Risk Description	Planned Mitigation
1	A reduction in staff morale leading to increased staff turnover, sickness levels and/or disruption to service delivery in the lead up to the transfer	<ul style="list-style-type: none"> • Maximise staff engagement and communication through a robust mobilisation plan. This will include: frequent service team meetings, joint staff briefings, one-to-one meetings with Capita (BDRS) Limited, Staff Group meetings, Capita (BDRS) Limited's end of consultation briefings, weekly DRS newsletters, access to Capita (BDRS) Limited's extranet and bulletins from Capita (BDRS) Limited. • Ensure that any issues or questions that arise are dealt with in a timely manner. • Monitor key HR performance indicators and listen to all staff concerns so that any issues arising can be addressed at the earliest opportunity. • Between the staff briefings announcing the preferred bidder on 20 May and w/c 5 August 2013 when staff started to meet Capita (BDRS) Limited, a raft of support mechanisms were available to staff including TUPE Q&A sessions with HR, Change and Me workshops and encouragement to use the Employee Assistance Programme. Further information is provided below in section 6 under Staffing Implications. • Capita (BDRS) Limited and the Council have run joint staff presentations for transferring staff (held on 6 & 7 August) welcoming Capita (BDRS) Limited and opening consultation on the council's and Capita Symonds's proposed TUPE measures on behalf of Capita (BDRS) Limited. Capita (BDRS) Limited and the Council will also be holding end of closing consultation staff briefings (which will form part of the closing of consultation staff presentations) where they will explain the terms and conditions that will transfer. This will be coupled with Capita (BDRS) Limited attending service team meetings, formal TUPE one-to-one meetings with HR and service leads. • When permanent staff resign before the transfer date, the Council will consider backfilling permanent posts with staff acting up, internal secondments as well as fixed-term contractors or agency workers to fill short-term gaps in resource. • Post-transfer, there will be a full consultation exercise for any restructures following Capita (BDRS) Limited's development of its Target Operating Model.

ID	Risk Description	Planned Mitigation
2	The council could be challenged over its handling of the TUPE process	<ul style="list-style-type: none"> • The Council is implementing the plan that ensures that the statutory TUPE information and consultation process and the employee liability information data transfer comply with the TUPE Regulations and best practice. • Employee liability information has been verified for accuracy by way of 2 data cleanse exercises, where letters were sent to each employee prior to the information being transferred. • The data will be transferred to Capita (BDRS) Limited in a secure manner and will be managed in accordance with the Data Protection Act and ICO Guidelines. Capita (BDRS) Limited will be the Data Controller for our transferring staff and Capita Business Services Limited will be the Data Processor. • An employee Equalities Impact Assessment has also been carried out at key milestones and, as it is a dynamic document, it is updated regularly to reflect how the council is addressing key issues. A copy of this ongoing assessment is in Appendix A.
3	Staff currently carrying out non-delegable statutory functions may choose not to sign the joint employment contract to allow them to carry out these activities post transfer.	<ul style="list-style-type: none"> • The Council sought legal advice about the approach to non-delegable statutory functions from our legal partner Trowers and Hamlin and also the Queens Counsel. • Joint employment (practical application) workshops were run for senior managers and affected staff in July 2013 where they were given key messages, illustrative workflow examples and their questions were answered. • A staff survey was carried out for joint employees and non-joint employees to ascertain the level of knowledge prior to the start of the joint employment consultation period. • Affected staff have been informed that by signing the joint employment contract there would be a momentary break in service but the Modifications Order would still apply and continuity of employment would still be protected should they voluntarily leave the Barnet contract with Capita and join another local authority. • The trade unions in the Tripartite Meetings (and the Staff Group and staff afterwards) were issued a copy of the proposed joint employment contract additional clauses to be added to the individual's current contract. A long list of posts affected was also provided to the trade unions.

ID	Risk Description	Planned Mitigation
4	Secondment and other staffing agreements and processes (e.g. acting up) wholly followed could cause confusion at the point of transfer around a secondee's entitlement	<ul style="list-style-type: none"> • Secondments and other staffing arrangements (eg acting up) are reviewed as part of the employee liability information; this will continue throughout the life of the project and, where appropriate, the council will discuss these arrangements with Capita (BDRS) Limited. • Capita (BDRS) Limited has agreed to honour any existing acting up arrangements at the point of transfer. • Staff who are currently seconded will either return to their substantive posts or be permanently appointed to their seconded post pre-transfer. These will be considered on a case by case basis.

4.3 These risks will continue to be assessed and managed in accordance with the Council's project and risk management methodologies.

5. EQUALITIES AND DIVERSITY ISSUES

5.1 Equality and diversity issues are a mandatory consideration in decision making by the Council pursuant to the Equality Act 2010. This means the Council and all other organisations acting on its behalf must have due regard to the equality duties when exercising a public function.

5.2 The three limbs of the public sector equality duty involve the need:

- To eliminate discrimination;
- To advance equality of opportunity by removing disadvantages from particular groups, meeting the needs of particular groups and encouraging under-represented groups to participate in public life; and
- To foster good relations between those sharing and those not sharing protected characteristics by tackling prejudice and promoting understanding.

5.3 The duty should be applied before a decision is made and be part of the decision-making process.

5.4 The protected characteristics under Equalities legislation are: Age, Disability, Gender, Gender Reassignment, Marital status, Pregnancy and maternity (including teenage parents), Race, Religion or belief, Sexual Orientation.

5.5 The Council has assessed the staffing changes being proposed by Capita Symonds as part of its Final Tender, and considered whether it will have an impact on employees with any of the protected characteristics in terms of three limbs of the public sector equality duty – discrimination, equality of opportunity, and good relations.

5.6 An updated employee equalities impact assessment has been completed by the council and is at Appendix A.

5.7 Having considered these issues in detail, it is the council's view that the overall impact on staff with protected characteristics, in terms of the council's ability to tackle discrimination and advance equality of opportunity, is likely to be positive. Where there are potentially negative impacts, there are mitigations proposed by Capita (BDRS) Limited or the Council. There is likely to be a neutral impact on good relations between those sharing and those not sharing protected characteristics.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

Staffing Implications

6.1 As at 31 July 2013, there are currently 256 managers and staff in-scope to transfer, based on the anonymous employee liability information provided to Capita (BDRS) Limited on 26 July 2013. A final report will be provided to Capita (BDRS) Limited two weeks before the TUPE transfer.

6.2 A summary of the staffing breakdown is set out below. Some of the teams have been renamed and restructured since the last report and this table reflects the new structure.

Service	Total Number of Staff
Strategy & Performance (excl Land Charges)	32
Land Charges	5
Strategic Planning (incl Transport & Regeneration)	32
Planning & Building Control	43
Environmental Health Residential	41
Environmental Health Commercial	18
Hendon Cemetery & Crematorium	20
Highways Network Management	32
Highways Traffic & Development	26
Trading Standards & Licensing	7
Total	256

6.3 All in-scope employees working within the council at the time of transfer will automatically become employees of Capita (BDRS) Limited under the TUPE Regulations when their work transfers on service commencement date.

6.4 The Council will meet all of its statutory obligations provided by TUPE. Under TUPE, existing contractual terms and conditions are protected on transfer and, under the TUPE Transfer Commitments the council implemented in the summer of 2011, all terms and conditions are protected for at least a year including pension provision (please refer to sections 6.14 – 6.18 below on the transfer of pension rights).

6.5 TUPE will operate to transfer to Capita (BDRS) Limited all of the council's rights, powers, duties and liabilities under or in connection with the contracts of employment of the relevant staff. This means that all in-scope employees working within the council at the time of the transfer will become employees of Capita (BDRS) Limited under the TUPE Regulations. The offering of the TUPE Transfer Commitments is over and above the TUPE Regulations 2006.

- 6.6 A joint employment contract will be provided to staff who carry out non-delegable statutory functions. This contract will be between Capita (BDRS) Limited, the Council and staff member and it will enable council officers to provide non-delegable statutory functions post-transfer. Non-delegable statutory functions are duties or powers exercised under legislation by an Officer employed by the Council. Some legislation is drafted so that statutory duties can be delegated; however, legislation is inconsistent in the way it is drafted and other legislation requires that a Council officer makes the decision. The Council assessed the possibility of separating roles to delegable and non-delegable functions but decided that this would create operational inefficiencies and decided a joint employment contract is required
- 6.7 All in-scope staff will transfer to Capita (BDRS) Limited under TUPE as described in point 6.5 above. Individuals that require a joint employment contract to carry out the non-delegable part of their role will sign the joint employment contract prior to the TUPE transfer to come into effect immediately after transfer. The individual will then be employed by both the Council and Capita (BDRS) Limited.

Information and Consultation

- 6.8 Staff and Trade Unions have been informed and engaged from the start of the project and this will continue up to and beyond the point of transfer. There have been monthly TUPE workshops for managers and TUPE briefings for staff, as well as regular project briefings through the process with staff and Trade Unions. Relevant materials can be sourced from the intranet where there is a link for the transfer and FAQs, as well as a weekly newsletter on the project. In addition, there were opportunities for staff to meet LBB Human Resources (HR) in employee surgeries before the mobilisation period began and also opportunities for staff to meet the bidders during the procurement process. Now that the formal TUPE mobilisation period has started, staff have the opportunity to meet Capita (BDRS) Limited HR to ask any personal questions, as well as their managers on a one-to-one basis and also through service specific briefings for staff to discuss the implications of the changes to them personally. This activity will continue throughout the mobilisation period to ensure that DRS has the best possible foundations to enable its success.
- 6.9 The Council is fulfilling its TUPE duties to inform and consult staff through tripartite meetings between the Council, Capita (BDRS) Limited and the Trade Unions, which began on 23 July 2013. The Council is proposing a TUPE measure on joint employment contracts for those staff carrying out non-delegable statutory functions, which is in Appendix B. The Council is facilitating tripartite meetings to enable Capita (BDRS) Limited pre-transfer to consult the trade unions on their proposed measures that they intend to make post-transfer. To date, Capita Symonds on behalf of Capita (BDRS) Limited has produced an initial TUPE measures letters which is attached at Appendix C and this will be followed up by a final measures letter once consultation has ended at the point of transfer. In addition to these statutory processes, the tripartite meetings will manage the implementation of the TUPE Transfer Commitments.
- 6.10 Capita (BDRS) Limited will formally start consultation on the implementation of their TUPE measures with the Trade Unions and our transferring staff after the

employees have transferred on the service commencement date (1 October 2013).

Support for Staff and Managers

Pre-mobilisation period

6.11 The Council has provided support to managers and staff throughout the procurement period through the provision of workshops covering the TUPE process and the personal change process ('Change and Me'). In the period up to 6 August 2013, the Council has put the following arrangements in place to support staff:

Emotional support

- Counselling
- Employee Assistance Programme – Workplace Options – available 24/7
- Change and Me workshops

Practical Support

- TUPE Answers 1-1 run by HR
- Single intranet page under DRS for all support matters with TUPE FAQs updated regularly
- Email address for comments and concerns: employee.support@barnet.gov.uk

Mobilisation of the Contract

6.12 The Council has implemented a full staff mobilisation plan to ensure that all of the TUPE obligations with regard to informing and consulting are properly discharged.

6.13 From 6 August 2013 the Council started working with Capita (BDRS) Limited to merge plans, agree key milestones and implement the staff mobilisation and transition plan set out in their Final Tender.

6.14 An important part of mobilisation is the release of staff from their duties to attend informative briefings, induction, one-to-one meetings and pre-contract training on new systems and processes, so that they can start to understand the culture and working processes of their new employer. The Council recognises that release at the early stages of mobilisation will contribute to a smooth transfer of staff and the process will be managed to ensure minimum disruption to the services supporting the Council and the residents of Barnet.

Employee Liability Information

6.15 In the lead up to the transfer, in addition to meeting the TUPE information and consultation requirements, the Council must provide Capita (BDRS) Limited with the relevant "employee liability information". This information must be given at least fourteen days before the transfer or, if special circumstances make this not reasonably practicable, as soon as is reasonably practicable after the transfer. It is proposed that there will be full transfer of relevant data prior to the point of transfer to ensure that there is a seamless transition with minimal disruption to staff and service delivery.

Pensions

- 6.16 Capita (BDRS) Limited will become an admitted body to the Pension Fund. New employees who join Capita (BDRS)_Limited and who are employed under a joint employment contract will be eligible for admission into the LGPS. New employees of Capita (BDRS) Limited will not be eligible for admission into the LGPS.
- 6.17 Capita (BDRS) Limited will pay the future contribution rate to meet any pension fund liabilities. The council has retained the element of the budget that pays for the repayment of the pension fund deficit.
- 6.18 The total pension contributions for jointly employed staff will be allocated to the appropriate sections of the pension fund.
- 6.19 A report will be submitted to the Pension Fund Committee meeting on 9 September 2013 recommending that Capita (BDRS) Limited is admitted into Barnet's Local Government Pension Fund by way of an admission agreement. This request will be supported by a pension bond and admissions agreement.
- 6.20 Staff who are not currently part of Barnet's Local Government Pension Scheme will be auto-enrolled into Barnet LGPS once they transfer to Capita (BDRS) Limited. These individuals will then have the option to opt out of the pension scheme.

Financial Implications

- 6.21 The baseline budget for the services in scope for NSCSO is £41.8m (expenditure). Of the total budget, £1.1m needs to be allocated to other One Barnet projects, as an element of support services are attributable to legal and Development and Regulatory Services (DRS). £1.9m is allocated to retained client functions, leaving a baseline of £38.8m attributable to the NSCSO contract. This is set out in the table below:

Expenditure baseline	£m
Baseline for in scope services	41.8
Attributable to legal, DRS	(1.1)
Retained client	(1.9)
NSCSO baseline	38.8

- 6.22 The services in scope for NSCSO include income budgets totalling £11.9m per annum.
- 6.23 The guaranteed financial benefits arising from the Preferred Bidder recommendation include savings on the core transferring services (reduction in expenditure and increases in income), procurement savings on contracting activity across other Council services and increases in collection of Council Tax. These financial benefits are as follows:

Guaranteed savings	Total over 10 years (£m)	Annual equivalent saving (£m)
Savings on core transferring services	70.1	7.01
Procurement savings	46.9	4.69
Council Tax collection	8.4	0.84
Total	125.4	12.54

The current MTFS has savings of £6.3m linked to the NSCSO contract from 2013/14 to 2015/16. In addition to this in Adults and Children's MTFS there is £4.5m of savings to be achieved in partnership with Capita.

Value for Money and Performance Implications

6.24 None in relation to this decision but value for money and performance implications were considered as part of the Cabinet report in June 2013.

Sustainability

6.25 None in relation to this decision but sustainability was considered as part of the Cabinet report in June 2013.

IS Implications

6.26 None

Property Implications

6.27 None

Corporate Procurement Implications

6.28 The procurement of the Development and Regulatory Services (DRS) was undertaken in accordance with the provisions of Directive 2004/18/EC, as implemented by the Public Contracts Regulations 2006 (as amended); following the Competitive Dialogue Procedure including an initial pre-qualification selection process. This was followed by an Invitation to Submit Outline Solution (ISOS) which was evaluated and down-sized to invite bidders to an Invitation to Submit Detailed Solution (ISDS). This second phase concluded with formal close of dialogue prior to Invitation to submit Final Tender (IFT). The Final Tenders were evaluated to inform recommendation to award stage. The outcome was to recommend Capita as the Council's preferred bidder for NSCSO and EC Harris as the reserve bidder.

7. LEGAL ISSUES

Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

7.1 TUPE is to meet the obligations of the United Kingdom to ensure the protection of employee rights when there is a transfer of an undertaking in

accordance with the European directive. A relevant transfer can be either a transfer of an undertaking, business or part of an undertaking or a service provision change identity involving the outsourcing, retender or insourcing of a service.

- 7.2 In circumstances where TUPE applies, the employees transferred will become employees of the transferee (Capita (BDRS) Limited in this case) by virtue of the statutory novation of their employment contracts under TUPE.

Pensions

- 7.3 Under Regulation 10 of TUPE, provision of an occupational pension scheme is excluded from the transfer. However, employees compulsorily transferred from the public sector have the Fair Deal for Staff Pension applied to them. This is a non-statutory policy introduced in 1999 that provides that the transferee (i.e. the new employer) must provide transferring employees with “broadly comparable” pension benefits.

The Duty to Inform and Consult

- 7.4 Where employees are transferred from one employer to another under TUPE, both the current and the new employer have duties to inform and potentially consult with appropriate representatives in relation to any of their employees, who may be affected by the transfer or by measures taken in relation to it. If the employer recognises a trade union, they must consult with that union; if not, employee representatives must be elected if they do not already exist.

Duty to Inform

- 7.5 Employees who might be “affected” by the transfer may include:
- Individuals transferred from the transferor (the Council in this case) to the transferee (Capita (BDRS)_ Limited in this case)
 - The transferor’s employees who don’t transfer but whose jobs might be affected by the transfer
 - The transferee’s employees whose jobs might be affected by the transfer.
- 7.6 The new and current employers are obliged to inform the representatives of their respective affected employees in writing of:
- The fact of the transfer, the date, and the reasons for it;
 - The legal, economic and social implications of the transfer for the affected employees;
 - Whether the employer envisages taking any action (e.g. a reorganisation) which will affect the employees and, if so, what action is envisaged;
 - The number of agency workers working temporarily for and under the supervision and direction of the employer;
 - The parts of the employer’s undertaking in which those agency workers are working; and
 - The type of work those agency workers are carrying out.
- 7.7 Where the current employer is required to give the information, they must disclose whether the prospective new employer envisages carrying out any measures which will affect the employees and, if so, what. The new employer

must give the current employer the necessary information so that the current employer is able to meet this requirement.

- 7.8 “Measures” means, for example, changes to terms and conditions, grading or other structures or the declaration of redundancies. It will include any action, step or arrangement in connection with the transfer. Usually it requires the new employer to have formulated some definite plan or proposal. It is not enough that there should just be some possibility of a transfer in contemplation.

Duty to consult

- 7.9 Unlike the obligation to inform, the mandatory obligation to consult will not arise on every relevant transfer. The current employer and the new employer will only have a mandatory duty to consult the representatives if either anticipates that it will take “measures” in relation to any of its own affected employees which are connected with the transfer.
- 7.10 However, there is no obligation on the new employer, prior to the transfer, to consult representatives of the transferring employees about measures which it envisages taking in relation to them. Nor is there any obligation on the transferor to consult them about such measures, as the obligation only arises in relation to measures which an employer envisages taking itself. This is an unsatisfactory position and often, in practice, either the current or new employer will consult the transferring workforce on such measures in the interests of good employee relations.
- 7.11 The consultation must be with a view to seeking the agreement of the employee representatives to the measures to be taken. There is no requirement actually to reach an agreement. At the least, the employer must give the representatives the opportunity to make representations about the measures being taken; consider and respond to any representations made and, if any, of these are rejected state the reasons for this.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

- 8.1 Constitution Part 3 - Responsibility for Functions – Section 3, Responsibility for Council Functions sets out functions of General Functions Committee in respect of staff matters.
- 8.2 HR Regulations state that where the following issues arise from an organisational restructure, the restructure will be considered to have major implications and a report must be submitted to General Functions Committee for approval:
- The anticipated outcome of statutory consultation will mean that 20 or more employees are put at risk of redundancy/TUPE transferred
 - Terms and conditions of employment are to be introduced or replaced.

9. BACKGROUND INFORMATION

- 9.1 In March 2011, the Cabinet Resources Committee approved the Outline Business Case for the DRS project. This business case recommended that the

Council undertake a procurement process to identify a strategic partner for the delivery of the following services:

- Building Control
- Environmental Health
- Hendon Cemetery & Crematorium
- Highways Network Management
- Highways Traffic & Development / Highways Strategy
- Highways Transport & Regeneration
- Land Charges
- Planning Development Management
- Regeneration
- Strategic Planning
- Trading Standards & Licensing

9.2 A 'competitive dialogue' procurement process has since been completed to identify the best partner for these services. Final Tenders have been received from two bidders – Capita Symonds (CSL) and EC Harris. The outcome of the evaluation is a recommendation that the council proceed with CSL as Preferred Bidder, to form a joint venture with the council to deliver DRS services.

9.3 The Full Business Case demonstrates how the Final Tender from Capita Symonds enables the Council to:

- meet the unprecedented financial pressures it is facing;
- invest in these services; and
- preserve and improve on existing service levels.

9.4 CSL's Final Tender contains a range of contractual guarantees to deliver or exceed the targeted benefits from the Outline Business Case Update approved by Cabinet Resources Committee in December 2011.

- The new provider to honour the council's TUPE Transfer Commitments
- Training, leadership development programmes, Continuous Professional Development and skills enhancement, Succession planning and talent management
- Opportunities to work on innovative and new projects
- £500 per person per annum, average 5 days per person per annum to be invested in training and development over the life of the contract
- Commitment to adding commercial skills and acumen to the services to enable individual development and growth of the business

10. LIST OF BACKGROUND PAPERS

- Minutes of Special Cabinet - 24 June 2013
- Minutes of Special Budget and Performance Overview and Scrutiny Committee – 11 June 2013

Appendix A – DRS Employee Equality Impact Assessment

1. Introduction

1.1 Purpose

1.1.1 It is recognised that such a significant transformation of services is likely to have an impact upon staff. This impact will be monitored through the completion of an Employee Equalities Impact Assessment (“EIA”); this is a “live” document and will be updated at key milestones throughout the lifespan of the project.

1.1.2 As part of the public sector Equality Duty, section 149 of the Equality Act 2010, the Authority is required to give due regard to the elements of the public sector equalities duty. The three elements of the public sector equality duty (**PSED**) involve the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act;
- advance equality of opportunity by removing or minimising disadvantages experienced by people due to their protected characteristics, meeting the needs of particular groups and encouraging under-represented groups to participate in public life; and
- foster good relations between those sharing and those not sharing protected characteristics by tackling prejudice and promoting understanding.

The duty is a continuing one, and equality considerations are required to be integrated into all stages of the procurement, commissioning and decision making process. The duty extends to the council’s procurement of goods, works and services from external providers, and equality considerations must be embedded in the council’s relationship with its staff, suppliers and any staff transferring to suppliers under the Transfer of Undertaking (Protection of Employment) Regulations 2006.

The PSED is non-delegable. The council remains the decision-making authority and must ultimately discharge the PSED.

1.1.3 This EIA is a live document and has been used throughout the procurement process, it will also be used to understand the impacts on groups of staff over the period of the DRS project as well as being used as a baseline for any future decision-making by Capita Symonds.

This EIA has been updated at key milestones in the process and has been part of the decision making at each part of the formal process as well as informally influencing decisions.

1.1.4 Capita Symonds will support the Authority in complying with its equality duty whilst it provides services on behalf of the Authority.

1.2 Aims and objectives of the OB programme

1.2.1 The project’s aim is to enable the Council’s development and regulatory services to be delivered differently to:

- provide improved services for their internal and external customers
- make savings to benefit the taxpayer
- enable them to adapt to a changing and evolving customer base in the light of any One Barnet developments and are therefore sustainable

1.2.2 The proposals approved in the Development and Regulatory Service options appraisal fit within the One Barnet principles. In line with the One Barnet principles, all services should:

- provide a new relationship with citizens
- be designed and delivered around customers' needs
- provide the best possible customer experience
- enable customers to help themselves by providing accurate and accessible information and enabling self-service wherever possible.

1.2.3 A one public sector approach should:

- be in a position to support the requirements of all public sector partners and drive better multi-agency working
- be flexible and, therefore, able to rapidly respond to changing demands.

1.2.4 A relentless drive for efficiency should:

- operate as efficiently as possible to both minimise the cost of the service and minimise the cost to customers of accessing the service
- be innovative and take advantage of evolving technology, thinking and practice
- maximise the value the Council achieves from all its assets (capital and revenue)
- safeguard the Council's position to maintain its reputation and comply with legal responsibilities.

1.3 Description of the critical milestones

- Identification of services in scope (Nov 2010):

Services
Building Control
Environmental Health
Hendon Cemetery & Crematorium
Highways Network Management
Highways Traffic & Development/Highways Strategy
Highways Transport & Regeneration
Land Charges
Planning Development Management
Regeneration
Strategic Planning
Trading Standards & Licensing

- End of dialogue one to reflect any changes to the scope of services included (Oct 2011)
- End of evaluation (January 2013)
- After the TUPE transfer of the activity to Capita Symonds (May 2013)

1.4 Key Stakeholders

- In-scope staff – represented by the staff group and service lead group
- Council customers – represented by the members of the advisory group, these are the service areas that use the services in scope
- Politicians – decisions regarding the progress of the project will be taken by Cabinet Resources Committee and Cabinet
- Senior Council officers – the project is sponsored by the Commercial Director and the board comprises of senior Council officers
- Trade Unions – represented by trade union staff who attend monthly meetings with the project manager, HR and project sponsor

2. Any Anticipated Equalities Issues at each milestone and identified mitigation

2.1 Identification of services in scope

2.1.1 This is not expected to have an impact on staff as it is purely a paper exercise to establish the size of all the services in scope.

2.2 End of dialogue one

2.2.1 This is not expected to have an impact on equalities. Following the first round of dialogue it may become clear that some services may be added or taken out of scope in which case the staff baseline will need to be re-profiled and updated within the EIA to reflect the new collection.

2.2.2 It is expected that further reorganisations of the services in scope will be carried across 2011/12. At this stage, the nature and extent of these reorganisations is unknown and, as such, it is impossible to assess whether there will be an equalities impact.

2.3 End of Evaluation

2.3.1 It is anticipated that there will be a joint employment contract for those staff who carry out non-delegable statutory functions; this is not expected to result in any equalities issues during mobilisation.

2.4 Staff Transfer

2.4.1 Capita Symonds has stated that the operation will be Barnet-based.

3.1 Monitoring Summary

Table 1- Employee EIA Profile of the One Barnet Development and Regulatory Services

Project (this profile is in accordance with the requirements of the Equality Act 2010 and the Council will collect this information so far as we hold it).

All numbers replaced by an 'X' have been aggregated to protect personal identification

		In-scope profile at outset date		End of dialogue 1 date		End of evaluation		Start of Mobilisation	
		Total Council Equality Figures %	In-scope %	Total Council Equality Figures %	In-scope %	Total Council Equality Figures %	In-scope %	Total Council Equality Figures %	In-scope %
Number of employees		3,418	214	2,788	223	2,748	250	2,617	255
Gender	Female	63%	47%	64%	48%	64%	45%	64%	45%
	Male	37%	53%	36%	52%	36%	55%	36%	55%
Date of Birth (age)	1985-1996	5%	6%	6%	7%	6%	12%	7%	13%
	1975-1984	20%	22%	21%	22%	21%	23%	21%	23%
	1965-1974	27%	31%	27%	30%	28%	29%	28%	29%
	1951-1964	39%	36%	40%	35%	40%	32%	40%	31%
	1941-1950	8%	5%	6%	5%	5%	5%	4%	4%
	1940 and earlier	0%	0%	X	0%	X	0%	0%	0%
Ethnic Group									

	White: British Irish Turkish Cypriot Greek Cypriot Other White	52% 3% 1% 1% 6%	62% X X X X	52% 3% 1% 1% 7%	63% X X X X	52% 3% 1% 1% 7%	62% X X X 4%	51% 3% 1% 1% 7%	62% X X X 5%
	Mixed: White and Black Caribbean White and Black African White and Asian Other Mixed	0% 0% 1% 2%	0% 0% X X	0% 0% 0% 2%	0% 0% X X	0% 0% 1% 2%	0% 0% X X	0% 0% 1% 2%	0% 0% X X
	Asian and Asian British: Indian Pakistani Bangladeshi Other Asian	7% 1% 1% 2%	5% X 0% X	7% 1% 1% 2%	5% X 0% X	7% 1% 1% 2%	6% X 0% X	7% 1% 1% 2%	6% X X X
	Black or Black British: Caribbean African Other Black	5% 8% 1%	7% 6% X	5% 7% 1%	6% 5% X	6% 7% 1%	6% 6% X	6% 8% 1%	6% 5% X
	Chinese / Other Ethnic Group: Chinese Other Ethnic Group	1% 2%	X X	1% 2%	X X	1% 2%	X X	1% 2%	X X
	Blank/Not assigned/Not declared	8%	6%	8%	5%	7%	5%	7%	4%
Disability	Physical co-ordination (such as manual dexterity, muscular control, cerebral palsy)	0%	0%	0%	0%	0%	0%	0%	0%
	Hearing (such as: deaf, partially deaf or hard of hearing)	X	X	X	X	X	X	X	X
	Vision (such as blind or fractional/partial sight. Does not include people whose visual problems can be corrected by glasses/contact lenses)	X	0%	X	0%	X	0%	X	0%
	Reduced physical capacity (such as inability to lift, carry or otherwise move everyday objects, debilitating pain and lack of strength, breath, energy or stamina, asthma, angina or diabetes)	X	X	0%	X	0%	X	X	X
	Learning difficulties (such as dyslexia)	X	0%	X	0%	X	0%	X	0%
	Mental illness (substantial and lasting more than a year)	X	0%	X	0%	X	0%	X	0%
	Mobility (such as wheelchair user, artificial lower limb(s), walking aids, rheumatism or arthritis)	0%	X	X	X	X	X	X	X
	Other disability	1%	X	1%	X	1%	X	1%	X
	No disability	98%	97%	97%	97%	97%	97%	97%	98%
Not stated	0%	0%	0%	0%	0%	0%	0%	0%	
Gender Identity	Transsexual/Transgender (people whose gender identity is different from the gender they were assigned at birth)	0%	0%	0%	0%	0%	0%	0%	0%
	Not stated	0%	0%	0%	0%	0%	0%	0%	0%

Pregnancy & Maternity	Pregnant but not yet on maternity leave (MatB1)	0%	0%	0%	0%	0%	0%	0%	0%
	Maternity Leave (current) (SMP&OMP)	0%	0%	0%	0%	0%	0%	0%	0%
	Returned from Maternity Leave (in last 12 months)	0%	0%	0%	0%	0%	0%	0%	0%
Religion or Belief	Christian	47%	48%	47%	48%	48%	46%	47%	46%
	Buddhist	0%	X	0%	X	0%	X	X	X
	Hindu	6%	5%	6%	5%	6%	6%	6%	5%
	Jain	0%	X	0%	X	0%	X	X	X
	Jewish	3%	X	3%	X	3%	4%	3%	4%
	Muslim	4%	X	4%	X	4%	X	4%	X
	Sikh	0%	X	0%	X	0%	X	X	X
	Other faith religions	4%	X	4%	X	4%	X	3%	X
	No religion	17%	22%	17%	23%	16%	22%	17%	20%
	No response on faith	8%	5%	7%	5%	8%	5%	8%	6%
	No form returned	1%	X	1%	X	1%	X	1%	X
	Atheist	1%	X	2%	X	2%	X	2%	X
	Agnostic	1%	X	1%	X	1%	X	1%	X
	Humanist	X	0%	X	0%	X	0%	X	0%
Not assigned	7%	7%	6%	7%	6%	6%	6%	5%	
Sexual Orientation	Heterosexual	67%	78%	69%	78%	70%	79%	70%	79%
	Bisexual	0%	X	X	X	0%	X	X	X
	Lesbian / Gay	1%	X	1%	X	1%	X	1%	X
	Prefer not to say	21%	13%	20%	13%	19%	12%	19%	12%
	Not assigned	10%	9%	10%	9%	9%	7%	9%	7%
Marriage and civil partnership	Married	34%	36%	30%	32%	32%	33%	31%	31%
	Single	27%	31%	22%	26%	24%	26%	22%	25%
	Widowed	1%	X	1%	X	1%	X	X	X
	Divorced	3%	X	3%	X	3%	X	3%	X
	In civil partnership	X	X	X	X	0%	X	X	X
	Co-habiting	1%	X	1%	X	1%	X	2%	X
	Separated	0%	X	X	X	0%	X	X	X
	Unknown	35%	26%	32%	22%	39%	32%	41%	36%
Not assigned	X	0%	11%	14%	X	0%	X	0%	
Relevant and related grievances	Formal	0%	0%	0%	0%	0%	0%	0%	0%
	Upheld	0%	0%	0%	0%	0%	0%	0%	0%
	Dismissed	0%	0%	0%	0%	0%	0%	0%	0%

3.2 Data

3.2.1 The above table shows the protected characteristics for the in-scope community involved in the DRS transfer to the new provider. Data will be assessed over the 4 key milestones in the process.

3.2.2 The assessments to date were shown against the in-scope community and the Council as a whole (excluding schools).

3.2.3 The assessment of this data is to:

- understand where certain activities proposed by the new provider may affect one specific group over another.
- understand the make up of the transferring community and compare this against the make up of the Council, the preferred position would be that the transferees are of a similar representation as the Council.

- the assessment at the key milestones is to ensure the transferring community remained of a similar composition and used as a basis to investigate any major changes in the statistics of this group if a dramatic change were identified.

3.2.4 The protected characteristics are: age, disability, gender reassignment, marital status, pregnancy and maternity (including teenage parents), race, religion or belief, sex, sexual orientation.

3.2.5 The make up of the transferring group is greater in the following areas:

- Gender: Male
- Age: Born between 1964 and 1951
- Ethic Group: White British
- Disability: no disability; where there are a limited number of individuals with declared disabilities, these have been aggregated
- Religion or belief: Christian
- Sexual orientation: Heterosexual
- Marriage and civil partnerships: Married

3.2.6 The make up of the transferring group is reflective of that of the retained Council, as shown in table 1, columns 4, 6, 8 and 10.

3.2.7 In a number of these categories the greater characteristic is not by a significant number, for example gender. This has remained around circa 47%/53% female/male split. This means that changes to the transferring group is more likely to affect a higher percentage of men than women.

3.3 Transfer of Information on Disability

3.3.1 The Authority has requested that the new provider requests equalities data from the transferring group at the point of transfer; this will not be transferred by the Council.

3.3.2 The intention is to both protect individual staff choice in the provision of this data to a new employer and to give staff the opportunity to refresh their equalities information.

3.3.3 A data cleanse has been carried out with the transferring staff on all transferring data. As part of this, staff have been given the opportunity to provide information on workplace adjustments, this can be anything from formal or informal working patterns to local arrangements, specific equipment or support to enable staff to effectively carry out their role.

3.3.4 Staff were informed that the workplace adjustment field will be submitted to the provider in the words provided by the individual. The new provider will offer to hold one-to-one meetings with all staff, this will give both parties the opportunity to explore this field and understand the detail of individual's personal requirements.

3.4 Maternity Leave

3.4.1 Staff on maternity leave will be offered the opportunity to attend all briefings and one-to-one meetings with both the Council and their new employer prior to and during the mobilisation period.

3.4.2 If meetings are attended, staff can use their "keep in touch" days to be paid for these sessions.

3.4.3 If it is impossible for a member of staff to attend, due to their personal circumstances at that time, their line manager will brief them in the most appropriate way, either at a more appropriate time or via telephone if necessary.

3.5 Data Gaps

- 3.5.1 The business case shows full-time equivalent (FTE) figures in the financial model; the EIA shows data described by percentage of headcount. This gives a clear view of the actual effect on each of the protected characteristics.
- 3.5.2 The above figures have been taken from the SAP HR system on employees known to be in-scope by name.
- 3.5.2 The data for the first two milestones were taken from the Council's standard data set which also included casual workers. The Council has since changed their data set to remove casual workers from their reporting; therefore a disproportionate drop in Council staff figures is shown.

3.6 Evidence

List below available data and research that will be used to determinate impact on different equality groups

- 3.6.1 The revised establishment lists from SAP provide the primary data, plus the data cleanse returns, 'local knowledge' of heads of service and one-to-one meetings between staff and the new provider.
- 3.6.2 When making any decisions affecting staff, the new provider will be expected to consider the impact of the project on the following, amongst other potential factors:
- Flexible working arrangements and their impacts on parents and carers (working practices)
 - Working from home (working practices)
 - The impact of moving staff to different work locations (relocation)
 - The impact of potential changes to holidays / term-time working (working practices)
 - The impact on staff of changes to their working culture (equalities)
 - The impact on staff of additional health and safety training (training and development)
 - The impact on staff of a different programme of investment and development (training and development)
- 3.6.3 Any changes to terms and conditions/policies and procedures proposed by the new provider will be subject to consultation post-transfer. The new provider has agreed to honour the council's TUPE Transfer Commitments so there will be no change to contractual terms and conditions for the first year following transfer.
- 3.6.4 The table at 4.1.4 shows potential impacts and mitigation proposed by the new provider in the final tender.

4. Project Milestone Outcomes, Analysis and Actions

4.1 Summary of the outcomes at each milestone

4.1.1 Identification of services in scope - EIA iteration - Nov 2010

The EIA data was reviewed in conjunction with the business case to identify any potential equalities implications on staff.

4.1.2 End of dialogue one – EIA iteration - Oct 2011

The ISOS submissions were completed and have been evaluated. At this stage there was a down selection from 4 bidders to 2. The EIA was updated and there were no equality impacts on staff at that time.

4.1.3 End of evaluation – EIA iteration - Jan 13

The EIA data has been revised and the proposals in the recommended preferred bidder's final tender are shown below.

A number of the changes proposed by the new provider will be seen as positive; where the impact of these changes are perceived as a negative, the impact of these and mitigation provided in the final tender have been considered in the table in section 5.

4.1.4 Transfer date

The EIA will be reviewed following the transfer in order to determine the actual impact on staff in scope, this will be the final milestone review.

5. Potential Impacts and Proposed Mitigating Actions/Benefits to Staff

Listed below is a summary of the key benefits to staff

	Proposed Activities	Potential Impact	Impact Type	Protected Groups Affected
1	Transition and Communication	Staff concern about protection of their terms & conditions and fair treatment at the point of transfer	Negative	All
Proposed Mitigating Actions/Benefits to Staff				
<ul style="list-style-type: none"> •Capita Symonds has stated that they will abide by the TUPE Regulations, all transferring staff will have their continuous service preserved under TUPE and that all their contracts of employment transfer, with staff retaining their key contractual transferring terms and conditions such as annual leave, grade and pay entitlements •Capita transition team is experienced and will be on-site to coach/mentor transferring staff. Over 70% of their existing 45,000 staff have transferred to Capita under TUPE from previous employers or through acquisition. Over 40% of those have come from Local Government. •Capita Symonds provide a full communication and engagement plan to integrate staff into the joint venture quickly and effectively including: <ul style="list-style-type: none"> ○ Inform and consult with TUs and staff ○ Working collaboratively with TUs to ensure consistency of message ○ Team manager sessions on HR processes and relevant Capita Symonds information ○ PeopleCare programme including welcome presentation, induction, staff bulletins, confidential email helpline, staff drop in sessions, one-to-one meetings, regular Q&As ○ ManagerCare programme is an extension of the PeopleCare programme to support managers ○ Staff briefings will consider various groups of staff including varying work patterns and locations •Capita Symonds HR staff integration team to support staff throughout transfer period. Enhanced HR support to transferring staff, such as training, leadership development programmes, Continuous Professional Development and funding for professional subscriptions”. •Capita Symonds have committed to a series of fortnightly collective tripartite consultation meetings; a terms and conditions matrix will be developed which will reflect the final agreed position which will apply to all transferring employees post transfer; they will confirm all final agreed measures to the transferring employees by way of a personalised letter; the opportunity for group or individual consultation sessions will be offered to 100% of staff prior to the service commencement date; they will not vary the contractual terms and conditions of transferring staff within the first 12 months of the contract. •Staff satisfaction survey within 9 months •Pension auto-enrolment at appropriate staging date 				
2	Consultation on proposed measures (known changes)	Staff concern about protection of terms & conditions	Negative	All
Proposed Mitigating Actions/Benefits to Staff				

	<ul style="list-style-type: none"> •Capita Symonds have committed to provide a terms and conditions matrix which will reflect the final agreed position which will apply to all transferring employees post transfer; they will confirm all final agreed measures to the transferring employees by way of a personalised letter; the opportunity for group or individual consultation sessions will be offered to 100% of staff prior to the service commencement date; they will not vary the contractual terms and conditions of transferring staff within the first 12 months of the contract. •The approach to contractual terms and conditions will be reviewed, in particular, the policies and procedures which support those terms and conditions with a view to aligning the policies and procedures to standard Capita procedures after the first twelve months of the partnership. However, any entitlements to pay, for example, maternity, paternity and company sick pay will remain.” • Provision of Capita Symonds of individual staff verification packs to confirm transferring terms and conditions (page 10 of HR SIDP para 2.1.1) •Signed up to the Council’s TUPE Transfer Commitments including admitted body status for the pension •Capita commits to fortnightly collective tripartite consultation meetings, following which a joint bulletin will be agreed and issued to all transferring employees. A pre-consultation measures letter will be produced to the council at contract award stage. They will confirm all final agreed measures to the transferring employees by way of a personalised letter which forms part of their verification process. 			
3	Training and Development	Development in role and career progression	Positive	All
Proposed Mitigating Actions/Benefits to Staff				
<p>Capita Symonds will:</p> <ul style="list-style-type: none"> • Post-transfer offer opportunities to work on innovative and new projects • Provide continuous professional development and skills enhancement • Provide staff with the right tools so they can excel in their roles • Manager Care programmes including all transferring managers will attend the Managers Guide to Employment Practices course • Succession planning and talent management • £500 per person per annum, average 5 days per person per annum to be invested in training and development • Mentoring for every transferring manager • Capita vocational learning programme • Appoint an Organisational Development Co-ordinator from within the transferring staff in scope • Career development • Skills mapping to identify training needs • Full roll out of performance appraisal process and setting of clear objectives clearly linked to KPIs • Focus on professional accreditation and support existing professional development plans • One annual business relevant professional subscription per person per annum 				

4	Restructure	Possible loss of employment or detriment suffered from changes	Negative	All
Proposed Mitigating Actions/Benefits to Staff				
<ul style="list-style-type: none"> •Capita does not envisage a large headcount reduction as a result of efficiency savings on their core services. The intention is to redeploy people into roles on growth activity. •They will adopt a fair and reasonable selection process, which will be consulted upon and applied consistently. Further potential redeployment opportunities throughout the partnership and in the wider Capita Group will be explored. •Capita have stated the operation to be Barnet-based •Offer of opportunities to work on innovative and new projects if appropriate •Provide continuous professional development and skills enhancement •Provide staff with the right tools so they can excel in their roles •Succession planning and talent management •Career progression •Skills mapping to identify training needs 				
5	Trade Unions	Staff concern over potential loss of TU representation	Negative	All
Proposed Mitigating Actions/Benefits to Staff				
<ul style="list-style-type: none"> •A series of fortnightly tri-partite meetings will be held between the Council, Capita Symonds and recognised TU's where equalities issues can be raised •Capita Symonds acknowledges that the London Borough of Barnet is committed to promoting and maintaining good industrial relations and acknowledges the commitments contained with the Trade Union and Employee Engagement Framework. •Capita has a great deal of experience of engaging trade unions regarding the transfer of staff under the TUPE Regulations and have in place a number of key strategic partnerships with trade unions •Capita has committed to engage with trade unions as part of consultation on any restructures post-transfer 				
6	Working practices	Staff concern regarding flexible working formal and informal	Negative	All
Proposed Mitigating Actions/Benefits to Staff				
<ul style="list-style-type: none"> •Capita have committed to honour 100% of existing flexible working arrangements for transferring staff. However, should business needs dictate that some local arrangements no longer work for the business, they reserve the right to discuss this with the employee 				
7	Equalities	Concern about moving to a new culture	Negative	All
Proposed Mitigating Actions/Benefits to Staff				
<ul style="list-style-type: none"> •Capita have committed to adding commercial skills and acumen to the services to enable growth •Developing existing staff and managers with new skills to maximise flexibility •Investing in new ICT to enhance customer service and maximise efficiency 				

- Investing in additional capacity to optimise service quality and enable growth
- Introducing best practice to improve productivity for further savings and capacity
- The PeopleCare programme comprises a series of communication and consultation activities and has proven to be a vital tool in supporting the transferring of staff and managers into the organisation
- A key element of the ManagerCare programme will be a half day cultural integration workshop

6. Briefing, Sharing and Learning

This table summarises the briefing activities. This EIA forms the primary briefing tool and has been shared as detailed below.

Table 2 Milestone Description	CDG	Cabinet / CRC	GFC	PFC
Identification of services in scope		28/03/11		
End of dialogue one		14/12/11		
End of evaluation/ recommendation of preferred bidder		24/6/13		
Transfer Date			9 Sept 13	9/9/13

Appendix B – the Council’s Proposed Measures Letter

One Barnet Human Resources
The London Borough of Barnet
North London Business Park
Oakleigh Road South
London N11 1NP

Private & Confidential

John Burgess, UNISON
Paul Coles, GMB
London Borough of Barnet

BY HAND

6th August 2013

Dear John and Paul,

Letter from the Authority to union representatives pursuant to TUPE Regulation 13(2)(c)

A number of the transferring employees undertake duties as part of their job which the Authority is unable to delegate to Capita (BDRS) Ltd, because this is not permitted under the law. This means that following the transfer of those employees to Capita (BDRS) Ltd they would be unable to undertake those particular elements of their job.

In order to overcome this problem, the Authority has agreed that immediately following those particular employees' transfer to Capita (BDRS), the Authority will be added to their contract of employment as a joint employer.

The contract of employment would then be what is known as a joint contract of employment, with both Capita (BDRS) Ltd and the Authority as employers.

This is a measure which we believe to be in the interests of the affected employees, as well as in the interests of the Authority and Capita (BDRS) Ltd. It would enable the employees in question to continue their work in the same way as they work at present. They would have the benefit of continuous employment with the Authority, should they leave Capita (BDRS) Ltd to take up employment with another local authority. Furthermore, in the event of any potential future restructuring exercise, any employee who was employed jointly would be entitled to be considered for redeployment by both Capita (BDRS) Ltd and the Authority.

In relation to the carrying out of that element of their job which the Authority can not delegate to the JV, the employees will be deemed to be employees of the Authority. They will be managed by, and report to, the Authority, and in this regard their manager will either be an employee who has not transferred to Capita (BDRS) Ltd, or who has transferred, but is also employed jointly, and acting as an employee of the Authority in relation to those specific functions.

For all other purposes, Capita (BDRS) Ltd will have been appointed by the Authority to act as the employer in the joint employment arrangement, including taking responsibility for salaries and pension contributions.

Insofar as pension arrangements are concerned, the employees who are jointly employed will be in the same position as the other transferring employees, having continued membership of the Barnet LGPS. They will be able to retain membership of the London Borough of Barnet fund of the Local Government Pension Scheme (the Fund). Capita (BDRS) Ltd will participate in the Fund as a transferee admission body.

The way in which the joint employment arrangement will be implemented will be through a schedule to the employees' existing contracts of employment, which will of course have transferred Capita (BDRS) Ltd and which will be signed by the JV, the Authority and each employee. There will be a list of the particular functions for which the employee is employed by the Council attached to each contract of employment.

Regards

Jennifer Burt

Programme Manager & HR Lead – Transition and Mobilisation

CAPITA SYMONDS

5th August 2013

Jennifer Burt
Programme Director
The London Borough of Barnet
North London Business Park
Oakleigh Road South,
London
N11 1NP

Dear Jennifer

Regulation 13 – Proposed Measures in respect of employees transferring from The London Borough of Barnet (LBB) to Capita (BDRS) Limited on 1st October 2013

As required under TUPE Regulation 13, I am writing to advise you of the initial proposed measures that will occur in connection with the transfer to Capita (BDRS) Ltd. At this stage, the measures outlined below are subject to consultation with recognised trade union representatives and therefore it is an interim measures statement.

Capita (BDRS) Ltd

Both Capita Symonds Limited and LBB are establishing a Joint Venture Company which will be the vehicle for delivery of the DRS Services, which is currently called Capita (BDRS) Limited as an interim measure. It is intended that all existing in-scope LBB employees will transfer under TUPE to Capita (BDRS) Ltd.

Capita Symonds will have the majority share of this company and act as the lead organisation for the day to day management of Capita (BDRS) Ltd, save for the specific arrangements for the “Joint Employees” referred to later in this document. It is intended that Capita (BDRS) will engage with the transferring employees with regards to the re-naming of the company post transfer. Once the name has been finalised as a result of this activity, Capita (BDRS) Ltd will be formally changed and communicated.

Please note, for the avoidance of doubt Capita Symonds Limited is in the process of changing the legal entity name, therefore with effect from 1st October 2013 any reference to Capita Symonds Limited will be replaced by Capita Property & Infrastructure Ltd.

Terms and Conditions & Policies and Procedures

Capita Symonds are fully committed to the requirements of the contract that state that for the first 12 months there will not be any changes to individual contractual terms and conditions of employment, save for practical changes to reflect the organisation. In the interest of supporting employee integration into Capita (BDRS) Ltd, we would like to enter consultation discussions surrounding the migration of non-

contractual policies as outlined in the LBB Policy matrix to Capita (BDRS) Ltd Policies.

Any proposed exceptions will be detailed in the Terms and Conditions Matrix, which will be used during the consultation period.

After October 2014 Capita (BDRS) Ltd commit to fully consult with the recognised Trade Union Representatives should there be any proposed changes to contractual terms and conditions of employment.

Capita (BDRS) Ltd has recently received information in relation to a recent transfer from Middlesex University to the Council. Capita (BDRS) Ltd is currently in the process of completing full due diligence into the transferring terms & conditions of employment, and will therefore propose any specific measures in due course.

Payroll

Capita (BDRS) Ltd propose that when the employee payroll moves to Capita on transfer staff will be paid on the 27th of each month or the preceding working day where this is a weekend or Bank Holiday and circa 20th in December. Capita (BDRS) Ltd commits not to put any employee at a financial detriment through this measure and have practices in place to support employees.

Proposed Structure

Upon transfer Capita (BDRS) Ltd will undertake a review of the existing DRS services and the organisational structure. Once this review has been completed it is anticipated that we may develop proposals in relation to a business restructure. We are unable to confirm the full details of any proposals at present, however it is proposed that following transfer and the completion of a full business review, the existing service clusters will be consolidated and two new service clusters developed in order to facilitate growth within the Joint Venture.

We anticipate a full review commencing soon after transfer with any subsequent proposals being developed within the first 12 months of the contract. Should any proposals be developed in this regard, Capita (BDRS) Ltd is fully committed to following a full and meaningful consultation process with Trade Union Representatives and final decisions will only be made after the consultation process has been concluded.

Joint Employees

It is proposed that there will be specific measures in relation to the "Joint Employees", who perform both statutory & non-statutory duties within their roles. Due to the explicit legislation in this area relating to the employment status of these individuals whilst performing statutory duties, they will be required to be employed by LBB during the execution of the non-delegable duties and employed by Capita (BDRS) Ltd for the performance of delegable duties. It is therefore proposed that they will have joint-employment status. Due to the specialist nature of this situation, Capita Symonds & LBB are currently working through the practicalities of this model and therefore future measures will be confirmed in respect of the Joint Employees once both parties have had further discussions.

Verification Letters

At the conclusion of the staff consultation, Capita (BDRS) Ltd will write to each employee detailing their own individual terms and conditions of employment that will transfer to Capita (BDRS) Ltd on the 1st October 2013. These statements will also detail any non-transferring terms and conditions and alternative arrangements.

Please note that this letter has been produced in order to support the TUPE consultation and is based on the current level of detail to date. At the end of the TUPE consultation period Capita (BDRS) Ltd will issue a final letter of proposed measures detailing final changes.

I trust that this is sufficiently detailed for The London Borough of Barnet and request that you inform the affected employees in compliance with regulation TUPE Regulations 13(2) (d).

We have attached a copy of 'Your Guide to Capita' which includes the Employee Handbook, which contains details of the Capita policies and procedures.

Yours sincerely

Claire Thompson
HR Manager
Capita Plc

Meeting	General Functions Committee
Date	9 September 2013
Subject	Director Induction and Awareness
Report of	Human Resources
Summary	To advise the Committee of all relevant advice and training given to Members and Officers on becoming nominated directors of companies in which the Council has a material shareholding interest.

Officer Contributors	Steve James, HR Consultant Trowers & Hamlin
Status (public or exempt)	Public
Wards Affected	Not Applicable
Key Decision	Not applicable
Reason for urgency / exemption from call-in	Not applicable
Function of	Council
Enclosures	Appendix 1 - Advice note from Trowers & Hamlin relating to potential conflicts of interests arising on the joint venture arrangements with Capita Symonds Ltd on the DRS project Appendix 2 - Summary of directors' duties (Companies Act 2006) Appendix 3 - Directors' interest – article 9.1 of the Articles of Association Appendix 4 - Director Awareness Training: Course Outline
Contact for Further Information:	Steve James - HR Consultant (steve.james@barnet.gov.uk)

1. RECOMMENDATIONS

- 1.1 That the Committee note the advice provided to Members and Officers of the Council on becoming nominated directors of companies in which the Council has a material shareholding interest. In particular, to note the advice provided vis a vis the nominated directors of the holding company and joint venture company created as part of the new partnership arrangements for Development and Regulatory Services.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Council 16 July 2013 – resolved that :

- Council approve the appointment of the Chief Executive and the Leader of the Council as the nominated Directors of the new company to be created to represent the Council's best interests as part of the new partnership arrangements for Development and Regulatory Services;
- Council approve the appointment of the Chief Executive and the Leader of the Council as the nominated Council representative Directors of the joint venture company with Capita Symonds Limited.

- 2.2 Cabinet 24 June 2013 – resolved that:

- Cabinet note the outcome of the evaluation stage of the Development and Regulatory Services project and accept Capita Symonds' final tender (including subsequent clarifications) as the preferred bid, with reference to the Full Business Case (Appendix A), Equalities Impact Assessment (Appendix B), List of Principal Legislation (Appendix C) and Evaluation Scores (Appendix D exempt);
- Cabinet instruct the officers to take all necessary action to complete the formalities for the finalisation and execution of the contract; and
- That Cabinet approve the formation of a Joint Venture Company with Capita Symonds Ltd and instruct officers to take all necessary actions.

- 2.3 Cabinet Resources Committee 14 December 2011 (Decision Item 5) – resolved that:

- The Cabinet Resources Committee approve the recommended Development and Regulatory Services (DRS) shortlist of two bidders for stage 2 of the competitive dialogue process;
- The recommended shortlist was: Capita Symonds Ltd and the EC Harris / FM Conway consortium. They achieved the highest two scores from the evaluation of the outline solutions provided at the end of the first stage of competitive dialogue; and
- The updated Development and Regulatory Services Business Case be noted.

- 2.4 Cabinet Resources Committee 28 March 2011 (Decision Item 5) – resolved that the Committee approve the Development and Regulatory Services business case, in order for the council to begin the competitive dialogue process, following the previously approved placing of the OJEU notice.
- 2.5 Cabinet, 29 November 2010 (Decision item 7) – resolved that the Commercial Director be authorised to commence the procurement process to identify a strategic partner for the delivery of the Development and Regulatory Services project.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Corporate Plan 2013/16 has defined the following objectives:
- Promote responsible growth, development and success across the borough.
 - Support families and individuals that need it – promoting independence, learning and well-being.
 - Improve the satisfaction of residents and businesses with the London Borough of Barnet as a place to live, work and study.
- 3.2 Closer working with other service providers and in partnership with third parties is key to the delivery of these objectives and the proper training and awareness of Council representatives will ensure that the Council's best interests are provided for in a legally robust and constitutionally compliant manner.

4. RISK MANAGEMENT ISSUES

- 4.1 There are no risk management issues over and above those identified in section 7 and which are addressed by reference to the legal advice in the appendices attached.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Equality and diversity issues are a mandatory consideration in decision making in the Council, pursuant to the Equality Act 2010. This means the Council and all other organisations acting on its behalf must have due regard to the equality duties when exercising a public function and such an obligation is ongoing.
- 5.2 The contract with Capita Symonds requires Capita Symonds (and by extension, the joint venture company) to observe equalities and the Council's own equalities policy requirements.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 There are no resource implications related to this recommendation over and above those indicated in prior reports relating to the new arrangements for Development and Regulatory Services.

7. LEGAL ISSUES

7.1 The legal issues associated with the nomination of directors as representatives of the Council are included in the detailed legal advice provided by Trowers & Hamlin in Appendix 1, 2 and 3.

7.2 In mitigation of such risks and with particular reference to the 'Next Steps' indicated in Appendix 1, Trowers & Hamlin, together with Council officers, have:

- Ensured that nominated directors are aware of their duties as set out in the Companies Act 2006;
- Ensured that directors have read and reviewed the constitutional documents (the Articles of Association) and the joint venture agreement entered into with Capita Symonds Ltd in order to ensure that obligations are known, understood and appropriate decision making procedures are followed;
- Considered the implications on the day-to-day Council activities of the elected members and officers who are proposed as directors of the joint venture company and ensure that the provisions of the relevant officers' or members' codes of conduct are known and followed.

7.3 The above actions have been achieved through:

- The provision of relevant documents to the directors (including Articles of Association);
- Ensuring they sign to acknowledge the content of important documents such as Director Mandates; and
- Mandating their attendance at a structured training course that covered all the detail of such duties and obligations as well as the practical implications of such. A copy of the outline course content is included at Appendix 4

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

8.1 Council's Constitution, Responsibility for Council Functions sets out functions of General Functions Committee, which includes all other Council functions that are not reserved to Council.

8.2 Relevant constitutional matters are also included in the advice provided by Trowers & Hamlin and are included in the course content in Appendix 4, to be delivered by appropriately skilled Council officers.

9. BACKGROUND INFORMATION

9.1 Other relevant background information is contained in the appendices attached.

10. LIST OF BACKGROUND PAPERS

Appendix 1 (Advice note from Trowers & Hamlin relating to potential conflicts of interests arising on the joint venture arrangements with Capita Symonds Ltd on the DRS project)

Appendix 2 (Summary of directors' duties (Companies Act 2006))

Appendix 3 (Directors' interest – article 9.1 of the Articles of Association)

Appendix 4 (Director Awareness Training: Course Outline)

Appendix 1:

Advice note from Trowers & Hamlin relating to potential conflicts of interests arising on the joint venture arrangements with Capita Symonds Ltd on the DRS project

Background

Cabinet will be asked to approve the formation of a joint venture company (JVCo) with Capita Symonds Ltd and to instruct officers to take all necessary actions in this matter. In order to form the JVCo the Council will thereafter be required to:

- approve the Articles of Association of the JVCo and enter into a joint venture agreement (the Agreement) with Capita Symonds Ltd;
- take an equity shareholding in the JVCo (a separate legal entity); and
- appoint two directors to the JVCo and the independent director/Chairman.

By setting up the JVCo and appointing directors to the JVCo the Council is raising the potential for conflicts of interests to arise on this matter. The purpose of this advice note is to set out:

- the obligations on the directors relating to conflicts of interests as contained in the Companies Act 2006, the Articles of Association, and the Council's constitution: and
- explain how they can be dealt with as part of the governance arrangements of setting up the JVCo.

Companies Act 2006

The Council is required to appoint two directors to the board of the JVCo. These directors are required to act in accordance with the Companies Act 2006 (the Act). The Act sets out detailed requirements on the directors relating to:

- the duty to act within powers (section 171);
- the duty to promote the success of the company (section 172);
- the duty to exercise independent judgment (section 173);
- the duty to exercise reasonable care, skill and diligence (section 174);
- the duty to avoid conflicts of interest (section 175);
- the duty not to accept benefits from third parties (section 176); and
- the duty to declare an interest in a proposed transaction or arrangement (section 177).

A summary of these director's duties pursuant to the Act are set out in Appendix 2.

Section 175 of the Act contains a statutory duty on company directors to avoid conflicts of interest. Conflicts in the sense used in section 175 are separated out from the duty not to accept benefits from third parties (section 176), and the duties to declare interests in proposed or existing transactions with the JVCo itself (sections 177, 182 and 183).

Section 175 requires that company directors must avoid all situations in which he/she has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the JVCo. The duty applies in particular to the exploitation of any property, information or opportunity, and it is immaterial whether the JVCo could have taken advantage of that property, information or opportunity itself.

It is a duty to avoid these situations at all times, unless one of the scenarios set out below applies:

- Under section 175(4)(a) the duty will not apply if the situation cannot reasonably be regarded as likely to give rise to conflict of interest. However unless it is very clear that this exception can be relied on, it would be safer to proceed as if there could be a potential conflict.
- Conflicts of interest arising in relation to transactions or arrangements with the JVCo itself are permitted to the extent that this is allowed in the JVCo's articles. The articles must provide descriptions of the transactions or arrangements with the JVCo which are permitted for this to be effective.
- Other section 175 'situational' conflicts can also be permitted in some scenarios, but only if the company's articles permit the directors to authorise such conflicts, and the directors (not including those directors with the conflict) actually authorise the specific conflict in question. Depending on when the constitution was drawn up, there may be additional steps to be taken to ensure that the directors have the power to authorise conflicts in this way.

All of these rules make it important to understand in detail what the directors are authorised to permit under the Articles of Association of the JVCo. It also makes it important to ensure that there are no conflicts which involve so many of the directors that it is not possible to form a quorum of directors with no conflict to authorise the situation.

From a practical point of view, it will be important to adopt and comply with a robust policy on dealing with conflicts.

The Articles of Association

The directors of the company are required to act in accordance with the Articles of Association of the JVCo. The Articles of Association of the JVCo include specific provisions relating to conflicts of interests and these are set out in full in Appendix 3.

The Council's constitution

We understand that the Council may appoint an officer and an elected member to act as the directors of the JVCo.

Should the Council decide to appoint an elected member as a director of the JVCo then the Council/elected member will need to:

- update the elected member's register of interest;
- consider the impact of becoming a director on the ability of the elected member to take part in Council business;
- ensure verbal declarations when attending meetings at which an item of business is to be considered and the elected member has a "non-disclosable pecuniary interest or non-pecuniary interest";
- notify the monitoring officer of any gift, benefit or hospitality with a value in excess of £25; and
- ensure compliance with the obligations set out in the Members' Code of Conduct.

Should the Council decide to appoint an officer as a director of the JVCo then the Council/officer will need to:

- declare any non-financial interest (including their appointment as a directors of the JVCo) in a timely manner;
- not become involved in representing the Council when holding the JVCo to account for performance, the procurement or the granting of contracts, and/or act in a way to confer other advantages on the JVCo;
- ensure a clear separation between client and contractor responsibilities;
- ensure that the director is not privy to confidential information on tenders or costs for either internal or other external contractors;
- comply with the requirements relating to gifts, hospitality and sponsorship; and
- ensure compliance with the obligations set out in the Officers' Code of Conduct.

Next steps

We advise that the Council completes the following tasks in order to manage the conflicts of interests which will arise on the formation of the JVCo and the appointment of directors:

- ensure that the directors of the company are aware of their duties as set out in the Companies Act 2006;
- ensure that the directors read and review the constitutional documents (the Articles of Association) and the joint venture agreement entered into with Capita Symonds Ltd in order to ensure that obligations are known, understood and appropriate decision making procedures are followed;
- consider the implications on the day-to-day Council activities of the elected members and officers who are proposed as directors of the JVCo and ensure that the provisions of the relevant officers' or members' codes of conduct are known and followed.

Appendix 2

Summary of directors' duties (Companies Act 2006)

A summary of director's duties pursuant to the Companies Act 2006 are set out below:

- The duty to act within powers (section 171)
 - A director of a company must act within their powers and in accordance with the company's constitution. They must only exercise powers for the purposes for which they are conferred. For these purposes, a company's constitution includes not only the company's articles of association, but also any special resolutions, agreements and certain other documents affecting a company's constitution.
- The duty to promote the success of the company (section 172)
 - A director of a company must act in the way he/she considers, in good faith, would be most likely to promote the success of the company (and in doing so must have regard to a number of statutory factors). This duty can be superseded by an obligation to consider or act in the interest of creditors if the company is approaching insolvency.
 - The extent to which this duty has been met should be addressed in the directors' report forming part of the business review required under section 415 and 417 of the 2006 Act.
 - The decision as to what will promote the success of the company (and what constitutes success), as well as any decision as to how much (if any) weight an individual factor merits, or how to balance or prioritise conflicting factors, is a decision to which the duty to exercise reasonable care, skill and diligence will apply.
- The duty to exercise independent judgment (section 173)
 - This duty codifies the principle that directors should not subordinate their powers to the will of others. It does not prevent directors from seeking external advice, but it does require them not to unreasonably follow such advice; it is the directors' responsibility to exercise the final judgment.
- The duty to exercise reasonable care, skill and diligence (section 174)
 - There is both an objective element and subjective element to this duty. It demands what may reasonably be expected of any person carrying out the functions of the director in relation to the company (the objective element) as well as the particular knowledge, skill and experience that each particular director actually has (the subjective element). For example, if a director has specialist legal skills, he/she will be expected to use those skills in order to carry out his/her duty.
 - In practical terms, this duty demands that directors attend meetings and become appropriately involved in the management of the company and its decision making processes. Directors may delegate the administrative duties of running the company to any staff and/or agents. However, they cannot delegate their responsibilities or discretions; consequently it is for them to set the policies which the officers or agents implement and to determine prudent parameters for any delegations. In addition, it is for the board to monitor and review compliance with such policies, delegations and performance generally. Adequate reporting procedures from officers or agents to the board are a vital component in protecting the directors and enabling them to fulfil their role.

- The duty to avoid conflicts of interest (section 175)
 - See advice set out above.
- The duty not to accept benefits from third parties (section 176)
 - A director of a company must not accept a benefit from a third party conferred by reason of his/her being a director or his/her doing (or not doing) anything as a director. There is no provision permitting the directors to authorise receipt of benefits for the purposes of section 176, so approval of general members of the company would be required if it were planned to do anything in contravention of this principle.
 - It should be noted that under section 176(4) this duty will not be infringed if the acceptance of the gift cannot be reasonably regarded as likely to give rise to a conflict of interest. It is probable that small gifts such as pens, pencils, diaries etc would not breach this section. However, there is no actual minimum value threshold in relation to this duty and so even the smallest of benefits which give rise to a conflict of interest will be caught.
- The duty to declare an interest in a proposed transaction or arrangement (section 177)
 - If a director of a company is in any way directly or indirectly interested in a proposed transaction or arrangement with the company, he/she must declare the nature and extent of that interest to the other directors before the company enters into the transaction. There is no specific requirement as to the form of the disclosure – it may be made by written notice, general notice or disclosure at a meeting of the directors.
 - The director is required to declare not only the nature but also the extent of his/her interest. There is no requirement to declare an interest of which the director is not aware, or to make a declaration where he/she is not aware of the transaction or arrangement in question (although he/she will be deemed to be aware of matters of which he/she ought reasonably to be aware). There is also a requirement to update any declaration which proves to be or becomes inaccurate or incomplete.
 - It should be noted that under section 177(6) this duty will not be infringed if the interest cannot be reasonably regarded as likely to give rise to a conflict of interest, or if the other directors are aware of it, or in certain situations pertaining to matters in the director's service contract.
 - The duty in section 177 is linked to sections 182 and 183 of the 2006 Act which deal with directors' interests in existing transactions or arrangements (i.e. those that have already been entered into by the company). Section 182 requires a director to declare the nature and the extent of his interest(s) in an existing transaction as soon as reasonably practicable, and make further declarations if the declaration proves to be or becomes inaccurate or incomplete. A declaration of a relevant interest made under section 177 – i.e. before the transaction is entered into – will avoid the need to also make a declaration under this section. As above, there are certain exceptions.
 - Note that a failure to comply with section 182 is a criminal offence.

Appendix 3

Directors' interest – article 9.1 of the Articles of Association

- 9.1 The directors may, in accordance with the requirements set out in this article, authorise any Conflict proposed to them by any director which would, if not so authorised, involve a director (the Interested Director) breaching his duty under section 175 of the Act to avoid conflicts of interest.
- 9.2 Any authorisation under this article will be effective only if:
 - 9.2.1 to the extent permitted by the Act, the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of these Articles;
 - 9.2.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director; and
 - 9.2.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's vote had not been counted.
- 9.3 Any authorisation of a Conflict under this article may (whether at the time of giving the authorisation or subsequently):
 - 9.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
 - 9.3.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the directors or otherwise) related to the Conflict;
 - 9.3.3 provide that the Interested Director will or will not be an Eligible Director in respect of any future decision of the directors in relation to any resolution related to the Conflict;
 - 9.3.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;
 - 9.3.5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the Company) information that is confidential to a third party, he will not be obliged to disclose that information to the Company, or to use it in relation to the Company's affairs where to do so would amount to a breach of that confidence; and
 - 9.3.6 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from reviewing papers prepared by, or for, the directors to the extent they relate to such matters.
- 9.4 Where the directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the directors in relation to the Conflict.

- 9.5 The directors may revoke or vary such authorisation at any time but this will not affect anything done by the Interested Director prior to such revocation or variation in accordance with the terms of such authorisation.
- 9.6 A director, notwithstanding his office, may be a director or other officer of, employed by, or otherwise interested (including by the holding of shares) in, the shareholder who appointed him as a director of the Company, or any other member of such shareholder's Permitted Group, and no authorisation under article 9.1 shall be necessary in respect of any such interest.
- 9.7 Any A Director or B Director shall be entitled from time to time to disclose to the holders of the A Shares or (as the case may be) the holders of the B Shares such information concerning the business and affairs of the Company as he shall at his discretion see fit, subject only to the condition that if there be more than one A shareholder or (as the case may be) B shareholder, the director concerned shall ensure that each of the shareholders of the same class receives the same information on an equal footing.
- 9.8 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors in accordance with these Articles or by the Company in general meeting (subject in each case to any terms and conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.
- 9.9 Subject to sections 177(5) and 177(6) of the Act, a director who is in any way, whether directly or indirectly, interested in a proposed transaction or arrangement with the Company shall declare the nature and extent of his interest to the other directors before the Company enters into the transaction or arrangement in accordance with the Act.
- 9.10 Subject to sections 182(5) and 182(6) of the Act, a director who is in any way, whether directly or indirectly, interested in a transaction or arrangement that has been entered into by the Company shall declare the nature and extent of his interest to the other directors as soon as is reasonably practicable in accordance with the Act, unless the interest has already been declared under article 9.9.
- 9.11 Subject, where applicable, to any terms and conditions imposed by the directors in accordance with article 9.3, and provided a director has declared the nature and extent of his interest in accordance with the requirements of the Act, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company:
- 9.11.1 may be a party to, or otherwise interested in, any such transaction or arrangement with the Company, or in which the Company is otherwise (directly or indirectly) interested;
- 9.11.2 shall be an Eligible Director for the purposes of any proposed decision of the directors (or committee of directors) in respect of such transaction or arrangement or proposed transaction or arrangement in which he is interested;

- 9.11.3 shall be entitled to vote at a meeting of directors (or of a committee of directors) or participate in any unanimous decision, in respect of such transaction or arrangement or proposed transaction or arrangement in which he is interested;
- 9.11.4 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;
- 9.11.5 may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested; and
- 9.11.6 shall not, save as he may otherwise agree, be accountable to the Company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such contract, transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such contract, transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.
- Decision making arrangements relating to the joint venture company with Capita Symonds Ltd on the DRS project

Appendix 4

LBB Directors Induction & Awareness Session

Officers and members of the London Borough of Barnet may, from time to time, become directors of companies wholly owned by the Council, joint-ventures with other companies or other forms of companies. As new directors, these officers and members will require some key information and training when they are first appointed. The items below highlight the key information they will need and this information will help them to understand their role and responsibilities, fulfil their statutory obligations and comply with the law.

These items form the basis of an induction and awareness session led by LBB officers and Trowers&Hamblins.

Agenda/Content	Lead
1. The Role of the Director	
An introduction to the role and legal responsibilities of a director – including an overview of the Companies Act 2006.	Trowers&Hamblins
Specific Duties under the Act (including practical examples of the duties in action): <ul style="list-style-type: none"> • To act within powers • To promote the success of the company • To exercise independent judgement • To exercise reasonable care, skill and diligence • To avoid conflict of interest • Not to accept benefits from 3rd parties • To declare an interest in a proposed transaction or arrangement 	Trowers&Hamblins
LBB Constitution, Codes of Conduct and related matters to external directorships	LBB (Governance)
2. Operation of the Board(s)	
Overview of the Joint Venture Agreement for Capita BDRS with specific reference to: <ul style="list-style-type: none"> • Business aims & objectives • Confidentiality • Deadlock provisions • Restrictions on CSL 	Trowers&Hamblins
Overview of Articles of Association of the relevant company(s)	Trowers&Hamblins
Specific implications for directors of relevant Articles (including practical examples of implications): <ul style="list-style-type: none"> • Board structure and board decision making • Delegated authority and individual decision making • Reserved matters and referral to Cabinet • Board procedures, protocols and the conduct of company affairs 	Trowers&Hamblins
3. General Housekeeping	
Insurances in place, including directors' liability insurance	LBB (Insurance)
Directors' mandates	Trowers&Hamblins
Relevant policies & standing orders eg disclosure of price sensitive information	Trowers&Hamblins