
Meeting	Audit Committee
Date	24 October 2013
Subject	Members' Item – Councillor Geof Cooke
Report of	Head of Governance
Summary	This report informs the Committee of a Member's Item.

Officer Contributors	Chidilim Agada – Business Governance Officer
Status (public or exempt)	Public
Wards Affected	None
Key Decision	No
Reason for urgency / exemption from call-in	Not applicable
Function of	Council
Enclosures	Appendix A: Contract Clauses
Contact for Further Information:	Chidilim Agada – Business Governance Service – Tel: 020 8359 2037.

1. RECOMMENDATIONS

1.1 That the Committee notes the report.

2. RELEVANT PREVIOUS DECISIONS

2.1 None.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

3.1 The Audit Committee provides the Council with independent assurance and effective challenge and, therefore, the Committee is central to the provision of effective governance that supports delivery of all corporate priorities.

4. RISK MANAGEMENT ISSUES

4.1 None in the context of this report.

5. EQUALITIES AND DIVERSITY ISSUES

5.1 Members' Items allow Members of the Committee to bring a wide range of issues to the attention of the Committee in accordance with the Council's Constitution. All of these issues must be considered for their equalities and diversity implications.

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

6.1 None in the context of this report.

7. LEGAL ISSUES

7.1 None in the context of this report.

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

8.1 The Audit Committee's terms of reference are noted in the Council's Constitution under Responsibility for Functions.

8.2 The Council's Constitution, Committees and Sub-Committees – Paragraph 6.1 states a Member (including appointed substitute Members) will be permitted to have one matter only (with no sub-items) on the agenda for a meeting of a committee or sub-committee on which he/she serves. Paragraph 6.2 states that Members' Items must be relevant to the terms of reference of the body which will consider the item.

9. BACKGROUND INFORMATION

9.1 Councillor Geof Cooke requested that a Member's Item be considered on the following matter:

“At Contract Monitoring Overview and Scrutiny Committee on 09/10/13 the head of the Capita operation for both Customer and Support Group (CSG) and Re stated that if Barnet Council wished to send in auditors on its own behalf it would require an agreement with Capita. Previously the Audit Committee has been told that Barnet has a contractual right to audit Capita's work on behalf of Barnet. Please could the Audit Committee receive clarification on the extent to which Capita could:

- 1) Refuse to allow auditing by or on behalf of Barnet.
- 2) Restrict the scope of an audit.
- 3) Restrict access to documents or computer records.
- 4) Restrict the number of auditors allowed to participate.
- 5) Decline access to particular individual auditors or audit companies.
- 6) Restrict access to particular Capita premises.
- 7) Otherwise withhold cooperation”.

9.2 The contract clauses for Re (DRS) and CSG contract specific to auditing are included within **Appendix A**. This contract/agreement was duly signed on the 5 August 2013 and went live on the 1 September 2013 and 1 October 2013 for CSG and Re (DRS) respectively.

9.3 Section 28.5 within Appendix A of the contract makes it explicitly clear about responsibility for an internal control environment being the responsibility of the service provider. In addition, for the benefit of the Committee, the Service Provider has their own internal audit function.

9.4 As for the questions raised by Councillor Cooke, with reference to Appendix A attached:

9.4.1 **1) Refuse to allow auditing by or on behalf of Barnet.**

Appendix A makes it clear as to the rights of auditing the services provided by Capita on behalf of the Council. In the first instance Capita is responsible for undertaking Audits using sound systems of internal control, including (amongst other matters) appropriate risk management processes, control systems, accounting records and governance arrangements (Internal Control) and Capita must give the Authority's Chief Internal Auditor assurances regarding the adequacy of the Service Provider's Internal Control environment by engaging with the Council's auditors over its plans as well as submitting plans, reports and any rectification plans. If Capita adheres to these obligations and no causes for concern are raised the Authority would not expect to have to Audit its activities or services.

9.4.2 In the event that the Council's Auditors did have concerns about the reliability of Capita's Audit or internal controls these concerns would be raised in line with the contract clause 28.5.3 and in response to which Capita would be required to use reasonable endeavours to rectify the issues.

9.4.3 But where Capita has not put in place an internal audit function or Internal Controls or the Council feels that Capita's audits and controls cannot be relied upon, the Council (or its appointed Auditor) has a right, to undertake “a risk based audit programme in relation to the Services” for which Capita pays.

9.4.4 The only limitation that are placed on the Council or its appointed Auditor from undertaking an Audit is the requirement to give Capita Notice of no less than two (2) Business Days notice where the Authority has concerns in respect of the Services, and ten (10) Business Days notice in all other circumstances) and that it should be for the following purposes, as set out under clause 28.6.1

9.4.5 The contract states “28.6.1 The Authority or its appointed Auditor may, upon no less than two (2) Business Days’ notice where the Authority has concerns in respect of the Services, and ten (10) Business Days notice in all other circumstances, conduct audits of the Services this is for the following purposes:

- (a) to verify the accuracy of the Periodic Service Payment (and proposed or actual variations to the Periodic Service Payment in accordance with this Agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
- (b) to review the integrity, confidentiality and security of the Authority Data;
- (c) to review the Service Provider's compliance with the DPA, the FOIA in accordance with clauses 36 (Data Protection) and 40 (Freedom of Information) and any other Legislation applicable to the Services;
- (d) to review the Service Provider's compliance with its obligations under clauses 4 (the Services) and 25 (Performance Monitoring);
- (e) to review any records created during the design and development of the Services;
- (f) to review any books of account kept by the Service Provider in connection with the provision of the Services and/or maintained in accordance with the provisions of clauses 28.2 and 28.3;
- (g) to carry out the audit and certification of the Authority's accounts;
- (h) to carry out an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (i) to verify the accuracy and completeness of any management information delivered or required by this Agreement (including information maintained in accordance with the provisions of clauses 28.2 and 28.3);
- (j) to inspect any Authority Assets, including the Authority's IPRs, equipment, facilities and maintenance and Assets, for the purposes of ensuring that the Authority's Assets and Assets are secure and that the Rolling Inventory or any other register of assets is up to date;
- (k) to ensure that the Service Provider is complying with the Authority Policies and where relevant (in accordance with the provisions of clause 55.4 (Laws, Policies and Related Matters)) the Service Provider Policies and any British or equivalent European standards;
- (l) to review the Service Provider's compliance with its obligations under clause 37.10 (Malicious Software); and
- (m) any other audit that may be required by any Relevant Authority.

9.4.6 The Committee should note that the Council’s Constitution is included as an authority policy for the purposes of (k) above.

9.4.7 2) Restrict the scope of an audit.

The only restriction to auditing is that it must relate to “the services” which is the work undertaken by Capita on behalf of Barnet, and not in relation to the wider Capita PLC business.

9.4.8 3) Restrict access to documents or computer records.

Appendix A makes it clear as to the access to documents or computer records, again the only restriction applies to “the services” rather than the wider Capita.

9.4.9 4) Restrict the number of auditors allowed to participate.

The contract does not specify and thereby restrict the number of auditors allowed to undertake an audit.

9.4.10 5) Decline access to particular individual auditors or audit companies.

There is no right to decline access unless there was an adviser conflict of interest under clause 58 of the contract, in that case it would notify the Authority and have to satisfy the Authority that this was the case before an alternative provider was put in place.

9.4.11 6) Restrict access to particular Capita premises.

Under Appendix A clause 28.6.2b the Council must be given reasonable access to any Service Provider’s premises in the performance of the Services.

9.4.12 7) Otherwise withhold cooperation.

Capita has very specific obligations to co-operate under the contract terms in relation to audits as set out in clause 28, but also more widely to cooperate with the Council and its partners in good faith to ensure the successful delivery of all Council Services.

9.5 Also, for the benefit of the Committee, the Council’s contractual agreement is a published document and can be found at the following link under the “CSG Mina Contract Clauses”:

http://www.barnet.gov.uk/info/940431/customer_and_support_group_csg_formerly_nscso_contract/1142/customer_and_support_group_csg_formerly_nscso_contract

10. LIST OF BACKGROUND PAPERS

10.1 Email from Councillor Cooke dated 10 October 2013.

10.2 Any person wishing to inspect the background paper above should telephone 020 8359 2037.

Cleared by Finance (Officer’s initials)	AD/JH
Cleared by Legal (Officer’s initials)	N/A