

	<p>Financial Performance and Contracts Committee</p> <p>17 December 2018</p>
Title	Update on Major Contracts and Contingency Planning
Report of	Commercial Director
Wards	All
Status	Public
Urgent	No
Key	No
Enclosures	None
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Summary

At its meeting on 27th February 2018, the Performance and Contract Management Committee considered a report that outlined the council's contingency planning arrangements, in the event of the failure of one of its providers of significant outsourced services. The Committee noted the contingency planning arrangements that were set out in the report. The report highlighted the particular complexities relating to ICT service provision and shared services that are delivered from outside Barnet. The purpose of this report is to update Members on these two specific issues, as well as providing a more general update on contingency planning in relation to the council's major contracts.

Recommendations

That the Committee notes the contingency planning arrangements set out in the report.

WHY THIS REPORT IS NEEDED

1.1 At its meeting on 30th January 2018, full Council passed the following motion:

“Council notes the collapse of the giant outsourcing firm Carillion earlier this month following financial problems, a number of profit warnings, the departure of its Chief Executive and a drastic plunge in its share price.

Council notes the uncertainty and concern this causes for thousands of Carillion's workers, the small businesses in its supply chain, the projects it was contracted to deliver, and the public who use the services it was contracted to provide.

Council notes LB Barnet's use of mass outsourcing contracts to provide critical backoffice, regulatory and other services, and therefore requests that the Policy & Resources Committee receives a report on what contingency plans are in place should anything similar happen to outsourced services in Barnet.”

1.2 It was subsequently agreed that the report should be considered by the Performance and Contract Management Committee and, at its meeting on 27th February 2018, that Committee considered a report that outlined the council's business continuity planning arrangements in respect of its major outsourced contracts, with particular reference to the risk of provider failure.

1.3 In broad terms, the potential need for contingency arrangements for the council's largest outsourced services are anticipated in the relevant contracts, i.e. with Capita (for RE and CSG) and with Mott Macdonald (for Cambridge Education).

1.4 In relation to the risks associated with a major supplier ceasing to trade, it should be noted that the Cabinet Office has recently agreed contingency plans with a number of major outsourcers, including Capita. More details are available here: <https://www.gov.uk/government/news/new-social-value-contracts-to-revolutionise-government-procurement>. It should also be noted that the situation with Carillion was rare, in that the company went straight into liquidation, rather than into administration. Where a company goes into administration, the administrator will maintain operations as far as possible, whilst seeking a buyer, thus providing continuity of service for a period of time.

1.5 The outsourced service contracts each contain a “financial distress” section, which sets out a range of indicators that are designed to provide a warning that a provider may be in financial difficulty. If these indicators are triggered, the contracts provide the council with certain rights that protect its interests and enable it to maintain service delivery. The triggers, and associated rights, are set at a number of levels, depending upon the potential severity of the financial

difficulty being experienced. The council's commercial team reviews these indicators on a regular basis. Both of the council's major service contractors are currently well within acceptable levels against these indicators.

- 1.6 At the highest level of financial distress, in the event of a provider going into liquidation or administration, the key means of securing continuity of service are the contractual provisions that give the council the right to "step in" and directly take over the running of services. The contracts provide protections for the council in respect of intellectual property rights, assets and access to information, should the need to exercise step in rights be required. Ultimately, the council would have the right to terminate the contract.
- 1.7 In practical terms, step in would mean that all staff would report, through the relevant director of operations, directly to one of the council's strategic directors. For the Cambridge Education and RE contracts, as well as elements of the CSG contract, this should be relatively straightforward, as services are provided predominantly by Barnet-based staff. In addition, the council's part ownership of the RE joint venture would enable it to assume all management responsibility for services delivered by joint venture employees.
- 1.8 As identified in the February report, there are two aspects of the CSG contract where step in may be more complex, as set out below.
- 1.9 Firstly, the council's ICT service is provided through the CSG contract. This covers the provision of hardware, networks, data storage, third-party software and core systems, some of which are hosted by Capita, but owned by third parties, and some of which (such as Integra) are themselves products owned by Capita. The key to planning for any potential issues in respect of ICT provision is the Configuration Management Database, which sets out the full details of how the infrastructure, systems and data are set up. An up to date version of this is held by council officers. There are business continuity and disaster recovery plans in place for ICT, which are reviewed on a regular basis in the light of emerging risks. These include identification of all systems used by the council and arrangements for transferring licences to council control. They also cover arrangements for ensuring continued access to data centres and other infrastructure.
- 1.10 Secondly, a number of CSG services are provided from elsewhere in the country, at shared service facilities, the key ones being:
 - Payroll (Belfast and Carlisle, for schools)
 - Customer service centre (Coventry, together with some local provision)
 - Revenues and benefits (Blackburn, Bromley and some local provision)
 - Pensions administration (Darlington)
 - Accounts Payable (East Sussex and Darlington)
- 1.11 These facilities are, primarily, used by central and local government clients, who would also have step in rights to ensure continuity of service. Should the need arise, the council would work together with these other clients (along with the

Cabinet Office and the administrator or receiver, as circumstances dictate) to agree suitable arrangements.

- 1.12 As indicated above, the council's payroll service is provided from shared service facilities. Whilst this would be covered by the same step in arrangements as other services, it should be noted that additional contingency arrangements are already in place for the failure of the payroll service, which could be deployed in the event of there being any particular difficulties in mobilising step in arrangements.
- 1.13 Since reporting in February, officers have carried out further work to strengthen the contingency plans for these two areas of activity. The work that has been going on to review the council's strategic contracts with Capita has aided this process, particularly in respect of increasing the level of information the council now holds regarding ICT infrastructure, staffing and contracts.
- 1.14 Contingency plans for these services now incorporate the specific initial steps that would be required, in the event that the likelihood of the supplier becoming insolvent increases.
- 1.15 Within the council's strategic risk register, the risk related to the commercial viability of strategic suppliers is currently rated at 15, with an impact score of 5 and a likelihood score of 3. Existing controls and mitigations that are in place include:
 - Contract management framework, with policy and procedures for commercial activity
 - Contract monitoring takes place monthly with quarterly reporting to Financial Performance and Contracts Committee
 - Contract register kept under review with checks on financial status of strategic suppliers
 - Contract management arrangements in place, including indicators to identify financial stress
 - Business continuity plans in place
- 1.16 The target is to reduce the impact score to 4, primarily by collating the information that would be required to enable the council to take over the running of services, should it become necessary, as outlined above.
- 1.17 As previously reported, officers will take the same approach on managing the risk of the failure of an outsourced service provider as they would with any other business continuity risk, i.e.:
 - Monitor the likelihood of the event occurring;
 - Ensure that plans are proportionate to the risk;
 - Be clear about what the next steps are, in the event that the likelihood of a risk occurring increases; and
 - Ensure that the council holds the necessary information to carry out these next steps.

2. REASONS FOR RECOMMENDATIONS

- 2.1 Financial Performance and Contracts Committee has a remit to consider the council's approach to risk management, as well as its arrangements for managing key strategic contracts.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 None.

4. POST DECISION IMPLEMENTATION

- 4.1 None.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The report outlines the contingency arrangements that are in place in respect of the council's key outsourced service contracts. These services are critical to the ongoing performance of the council and the achievement of its priorities.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 In addition to providing for continuity of service, the outsourced contracts also give the council certain rights to protect its financial interests, in the event of financial distress. These include provisions that would enable the council to require a provider to make use of escrow accounts, whereby monies paid by the council to the service provider are kept in a ring-fenced account held by a third party, and provisions that would require the provider to take out a performance bond with a third party that would cover any additional costs incurred by the council.
- 5.2.2 Any unplanned costs in addition to those met by escrow accounts or bonds may need to be met by the council's reserves and general fund balances. It is, therefore, necessary to ensure that the scale and nature of potential risks that the council may be exposed to are reviewed regularly and that suitable mitigations are put in place, through the council's corporate risk approach.

5.3 Social Value

- 5.3.1 None in the context of this report.

5.4 Legal and Constitutional References

5.4.1 Under the Council's Constitution, Responsibility for Functions (Article 7), the Financial Performance and Contracts Committee has the following responsibility for functions:

- Overall responsibility for quarterly budget and performance monitoring; oversight of contract variations including monitoring trading position; and financial strategy of council services and external providers.
- To make recommendations to Policy and Resources and Theme Committees on relevant policy and commissioning implications arising from the scrutiny of performance of council services and external providers.
- Specific responsibility for risk management and treasury management performance.
- To consider any decisions of the West London Economic Prosperity Board which have been called in, in accordance with this Article.

5.5 Risk Management

5.5.1 The council has an established approach to risk management, which is set out in the Risk Management Framework. All risks are reviewed on a quarterly basis (as a minimum) and the corporate risk register (comprising strategic and high-level service/joint risks) is reported to this Committee as part of the Performance Monitoring Report.

5.6 Equalities and Diversity

5.6.1 The Equality Act 2010 requires organisations exercising public functions to demonstrate that due regard has been paid to equalities in:

- Elimination of unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advancement of equality of opportunity between people from different groups.
- Fostering of good relations between people from different groups.

5.6.2 The Equality Act 2010 identifies the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership, pregnancy and maternity; race; religion or belief; sex and sexual orientation.

5.6.3 In order to assist in meeting the duty the council will:

- Try to understand the diversity of our customers to improve our services.
- Consider the impact of our decisions on different groups to ensure they are fair.
- Mainstream equalities into business and financial planning and integrating equalities into everything we do.
- Learn more about Barnet's diverse communities by engaging with them.

This is also what we expect of our partners.

5.6.4 This is set out in the council's Equalities Policy together with our strategic Equalities Objective - as set out in the Corporate Plan - that citizens will be treated equally with understanding and respect; have equal opportunities and receive quality services provided to best value principles.

5.7 Corporate Parenting

5.7.1 Not applicable.

5.8 Consultation and Engagement

5.8.1 Not applicable.

5.9 Insight

5.9.1 Not applicable.

6. BACKGROUND PAPERS

6.1 Report to Performance and Contract Management Committee, 27th February 2018:

<https://barnetintranet.moderngov.co.uk/documents/s45221/Report%20to%20PCM%20Feb%202018%20Contingency%20Planning%20FINAL.pdf>

6.2 Motion to Full Council, 30th January 2018:

<https://barnet.moderngov.co.uk/documents/s44594/Opposition%20Motion%20in%20the%20name%20of%20Councillor%20Barry%20Rawlings%20-%20Public%20services%20and%20outsourcing.pdf>