

Special Cabinet

6 December 2012

Agenda Item 4 – Public Question Time

1. John Dix – Why is the report before this committee different from the report scrutinised by the Budget & Performance OSC on 29 November even though they have the same date, authors and version number and which report is the correct version?

There were a number of updates made to the reports between submission to Budget and Performance Overview and Scrutiny and subsequent submission to Cabinet. This is customary when pre-decision scrutiny takes place. The Full Business Case document date and version number should have been amended to reflect this. For the avoidance of doubt, the version of the document published within the papers for the Cabinet meeting of 6 December is the version that Cabinet is considering.

2. Frances Briers – My question 43 was answered by you saying you had employed a leading firm of lawyers call Trowers & Hamlins to give expert advice required to drawn up this contract. How much did this cost?

In relation to the New Support and Customer Services Organisation (NSCSO) contract, we anticipate that the total spend with Trowers & Hamlins until the end of 2012/13 will be £475k. This figure includes support from Trowers & Hamlins from the inception of the project until its expected conclusion.

Given its complexity and size, up to 10 lawyers have been working on this project. This has included specialists in areas such as employment, pension and intellectual property law.

3. Julian Silverman – Have Cabinet Members read the report: "Catalyst Councils" produced by Capita and 'Localis'?
Do they consider that there is any significance in the face that government minister Oliver Letwin provided an introduction to this report?

Are they of the opinion that the introduction – and particularly the remarks [below]:

- 1] have any application for Barnet Council?
- 2] could be an indication that the dire financial situation of Barnet and other councils is deliberate: part of a nationwide plan to ruin town hall finances and offer much needed investment opportunities to giant corporations?

Does the cabinet believe that the government is genuinely committed to "make room for the knowledge, experience and capacity of local people." and to transfer "power and influence over how services are delivered into the hands of those who use them."? Does Barnet council intend to comply with government policy?

[Extract from introduction] *"It is no longer good enough that some of our citizens should have to put up with unresponsive, underperforming and uniform services, designed and delivered by a top-down process with no regard to the nuances of local need, no flexibility to adapt to changing circumstances or no requirement to listen to and make room for the knowledge, experience and capacity of local people. That is why this Government is committed to the transfer of power and influence over how services are delivered – away from the center, and into the hands of those who use them."*

Oliver Letwin MP, [Minister of State, author of "Privatising the World"]

We would agree with the sentiment expressed in this quoted extract that our residents should expect high quality front line services, tailored where possible to individual or local needs. To do this requires two things:

- (i) A redirection of resources to these services by delivering our support services as efficiently as possible; and*
- (ii) Investment in our customer services to deliver a more personalised and informed service to our residents*

For clarity, this response in no way endorses or otherwise comments on the assertion that there is "a nationwide plan to ruin town hall finances and offer much needed investment opportunities to giant corporations".

4. Tirza Waisel – Can the Cabinet please explain why does it object to carrying out a proper Public Sector Comparator and compare this to Capita's bid, as is considered to be best practice and as per the council's statutory duty to seek Best Value, according to the Local Government Act 2003? Please note the difference between an Options Appraisals, which Cllr Rams mistook for 'In-house' or 'Public Sector Comparator' and the real thing. Please see document explaining the [case for PSC](#). Please also see the attached examples demonstrating what Public Sector Comparator is.

The Public Sector Comparator (PSC) is an analytical tool generally used in connection with a PFI procurement exercise. It is a hypothetical costing of a public sector response to an output specification, and it is designed to compare the hypothetical costs of a publicly funded solution against a proposed PFI solution. It would therefore need to take account of the additional funding costs of any investment in services, and also the risk-adjusted costs over the lifetime of the project. It was required as part of the

formal sign-off process for PFI projects, but is not mandatory for a general procurement of services transformation, the funding for which is not being provided by central government departments. The PSC is a hypothetical costing of an in-house resource model to deliver future requirements. It is not the same as a detailed business case for an in-house delivery arrangement.

The process adopted for the NSCSO project was to prepare an Options Appraisal. The Options Appraisal set out the objectives of the project which were derived in turn from the objectives of the One Barnet programme. The various delivery options were then assessed against those objectives using a number of criteria. The strategic partnership option was assessed as the most likely to deliver the intended objectives, and an Outline Business Case was prepared to set this out and act as the baseline document for the subsequent procurement process. The business case has been updated at the shortlisting stage and now at the preferred partner stage. The Final Business Case confirms that the objectives set out in the Outline Business Case will be achieved and indeed exceeded. The financial benefits are also included in the draft budget for 2013/14 to 2015/16, and are a key element in the proposed balanced position.

The procurement process has been conducted in accordance with all relevant legislation and guidance. The process has resulted in a recommendation to appoint a preferred bidder and a reserve bidder. Both bids satisfied the Council's requirements.

5. Barbara Jacobson – When the Cabinet lists all the services currently outsourced, plus those to be outsourced in the NSCSO contract, and those likely to be outsourced in the DRS contract, what is the total number and what percentage of Barnet's 'public' services do they represent?

By value of total budget, NSCSO comprises approximately 11% of the Council's budget and DRS comprises approximately 4.5%, so in total they represent 15.5% of the Council's budget (excluding schools & benefit payments).

6. Keith Martin – Why, in the face of overwhelming public criticism of the contracts with Capita as drafted and presented to the Cabinet, has the Cabinet neither:

- 1 Postponed consideration until adequate scrutiny has been made, or

The contractual terms and condition with Capita started as a document written by the Council's solicitors, Trowers & Hamblins, on the instructions of

the Council and shared with Capita in April 2012. Amendments and additions to these terms and conditions with Capita have been developed and scrutinised over the following seven months by the Council's officers and advisors. The accompanying financial and technical parts to the contract have been subject to the same degree of scrutiny by the Council's officers and advisors. All parts of Capita's Final Tender submission were reviewed in detail during the eight week evaluation period in order to identify clarification questions and produce scores.

Members have been briefed throughout the duration of the NSCSO project and were briefed on the specific details of Capita's Final Tender once the officer recommendation created through the evaluation process was known. Members have also had direct access to the contract, and the Council's commercial and legal advisors, to further aid the executive decision making and scrutiny processes.

2. Instructed its advisers to draw up Plan B contracts for outsourcing services until May 2014, at which date the newly elected Council would be free to renew or cancel them?

Cabinet has to take certain decisions for the longer term benefit of the Borough. Sometimes this means entering into contracts that extend beyond the typical four year cycle of administrations. The proposals deliver value from Day 1, value that would be significantly diminished if we delayed transformation until May 2014. The contract has sufficient flexibility to allow changes in Council priorities to be accommodated and the Council retains the ability to terminate if that option is deemed appropriate and cost effective at any time.

7. Roger Tichborne – The Leader of the Council has claimed that £120 million will be saved by awarding this contract to Capita. Can the Leader confirm that the way this saving has been calculated, includes all legal fees, contract monitoring, dispute resolution and services currently performed by the council, which are at present outside the scope of the contract, but will be brought into the contract once the requirements have been identified. Does this also include the costs associated with setting the project up and consultants to give independent expert advice before, during and after the term of the contract?

The business case sets out savings of £125m that have been guaranteed by Capita in their proposal. The financial baseline was adjusted to factor in retained client costs, so all contract monitoring and dispute resolution costs have been factored into these figures already.

The report also sets out that the project is expected to cost £2.1m by its conclusion. These costs have been met from the Council's transformation reserve and have not been factored into the £125m.

8. Theresa Musgrove – Throughout the reports recommending the bid from Capita there are significant assumptions about the benefits which will accrue if the NSCSO is run by Capita, with several references to the 'interface' with DRS functions, and this statement in Appendix A, Section 4:

- the addressable spend assumptions upon which the Managing Agent savings commitment is based may change as the budget for 2013/14 and when the outcome of the DRS procurement is finalised;

In his interview on Sunday's BBC Politics Show, the leader of the Council, Councillor Richard Cornelius referred to planning, and said that it was not certain that this service, one included in the DRS bundle, would be outsourced.

Is the DRS competitive dialogue about to be dropped? If not, why is there so much uncertainty about the services to be included, and whether or not it will now be as part of a Joint Venture model, and does this fundamental uncertainty negate some of the most important assumptions of financial benefit in the recommended bid from Capita for NSCSO?

In line with the Council's constitutional arrangements, it is only certain that a service will be outsourced once formal approval to award of the related contract has been given. As the Development and Regulatory Services competitive dialogue process is still underway, that decision has not been made.

The Cabinet's support for the DRS competitive dialogue process is undiminished.

9. Fiona Brickwood – The council's proposed outsourcing to Capita has not taken account of the Public Services (Social Value) Act 2012 and is not compliant with this Act. The Public Services (Social Value) Act is specifically about the outsourcing of public services. It requires that a local authority who is proposing to outsource must consider how this might improve the economic, social and environmental well-being of its area. Social value must be considered. The following wording is an abridged extract from the Act itself (emboldening added):

If a relevant authority proposes to procure or make arrangements for procuring the provision of services,...by entering into a public services contract...before starting the process of procurement,

(3) The authority must consider—

(a) how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area [ie Barnet], and

(b) how, in conducting the process of procurement, it might act with a view to securing that improvement.

http://www.legislation.gov.uk/ukpga/2012/3/pdfs/ukpga_20120003_en.pdf

Chris White MP, who introduced the Act in 2010, said:

“The aim of the Act is:

to support community groups, voluntary organisations and social enterprises to win more public sector contracts, and

to change commissioning structures so that a wider definition of value rather than just financial cost is considered.”

The following guide to this legislation is helpful:

http://www.socialenterprise.org.uk/uploads/files/2012/03/public_services_act_2012_a_brief_guide_web_version_final.pdf

Does the Cabinet acknowledge that, because its proposal to outsource council services to Capita has not taken account of the Public Services (Social Value) Act, and may not be in compliance with this Act, the council must not proceed with this proposed outsourcing until it has established that it is in compliance with all relevant legislation?

Section 1(3) of the Public Services (Social Value) Act 2012 which is quoted in the question is not yet in force. Once in force it would only apply to those contracts that are in the pre-procurement stage, which is a milestone that the NSCSO procurement process has passed. The Council has complied with all relevant legislation as part of the procurement.

10. John Dix – How much of the investment in technology will be located in Barnet Council premises, how much will be added to technology already located on Capita premises, how will you determine the asset value of the investment and how will you authenticate the value of the investment?

Broadly, 20% of the asset investment will be within Barnet and 80% elsewhere.

All expenditure in relationship to the contract can be authenticated by the Council through its rights of access to Capita's partnership books of account and asset register, which it is contractually obliged to keep. Also the Council can request an annual certificate of income and expenditure, which mirrors the form of the financial model but incorporates actual expenditure and income figures for the relevant financial year. Capita are obliged to grant access for the Council, or any experts it appoints, to inspect the source information for the cost and income entries into this certificate for the purposes of verification. Relevant records of income and expenditure are required to be retained by Capita for a period of 6 years following termination or expiry of the contract.

The contract includes audit provisions and the Council will enforce its ability to audit records regularly.

11. Frances Briers – How long have Trowers & Hamlins been working on the contract?

Trowers and Hamlins' mandate commenced in June 2011 working on pre-procurement matters and input into the procurement documentation with work on the contractual provisions commencing thereafter.

12. Tirza Waisel – Considering the fact that in the financial years 2008/9 and 2009/10, the collection of council tax stood on 96.3%, and being that this is an important part of the council's income, why was the tax collection rate that was set as a benchmark for Capita based on the lowest rate collected in the financial year 2010/11, which was only 95.6%, due to severe software migration problems? (*Budget & Performance Scrutiny Committee meeting 29/11/2012*). Why wasn't the benchmark set at the national average of council tax collection in England of 97.3% or at least as the in-house Barnet performance of 96.3%?

Capita has committed to at least maintain the current levels of performance from the date of service transfer. This includes overall Council Tax collection rates (measured over a four year period from the date of the demand) and in-year collection rates.

In year collection rates are subject to fluctuations for a number of reasons as the question suggests, but the financial impact of fluctuations in this measure is not as significant as fluctuations in overall collection (ie: when measured over four years).

Capita's fundamental commitment in this area is to increase overall collection rates above the current collection rate of 98.2%

13. Barbara Jacobson – The Leader of the Council has said that the Council sets policy and the officers only implement it. How does the Cabinet explain that the day after the Leader and his deputy publicly denied that the DRS would be a joint venture, senior officers confirmed to staff that the DRS would be a joint venture, and now the Leader is saying, indeed, it will be a joint venture?

The possibility of setting up a Joint Venture to run Development and Regulatory Services (DRS) was retained when the business case was last considered by members. Officers have been running the DRS procurement process in line with the direction provided by members.

14. Mr Keith Martin – How do you justify your public statement on national television that the outsourcing contracts exclude front line services when in fact Social Care Direct is one of the services included?

There are three services within scope of NSCSO that provide services to the general public. These are Customer Services, Revenues and Benefits and Estates. Social Care Direct is one of the call centre teams in the customer services function, which provides advice and support via the telephone. Capita has committed to retaining this team within Barnet. Any future change to this would need to be agreed with the Council before being implemented.

15. Fiona Brickwood – The Scrutiny Committee (29 November) considered the fate of employees who are made redundant as a result of this outsourcing proposal. The Committee advised that Capita would have an obligation to look at redeployment of the individuals affected, and that, as Capita has 46,500 employees, there would be “more redeployment opportunities within Capita than if an individual was still employed by the council”

Capita says it employs 45,000 staff in UK, Ireland, India and Europe. However, it only has 268 job vacancies. Most of these are in IT and construction. Only 44 of its jobs are in London.

http://careers.peopleclick.com/careerscp/client_capita/external/en_US/search.do

Given that Capita has such a tiny number of jobs available, and that many of those jobs will require different skills from those of the council’s employees being laid off, does the Cabinet consider that Capita has been misleading in representing that it can offer redeployment opportunities to the Council’s laid-off staff?

Every organisation that has staff at risk of redundancy has a duty to try and redeploy those staff within their own organisation. This activity should happen before those roles are advertised internally or externally.

Barnet Council currently has 33 external adverts for vacancies on their website, 9 of these are within the Council, 23 are vacancies within schools and 1 is for 40 intern placements.

The Council currently has 19 vacancies available for redeployees only.

Capita will freeze vacancies if they know that there is going to be a local relocation and there is a likelihood that staff may be put at risk of redundancy if they are unable to relocate. This gives staff a wider vacancy pool for redeployment.

Capita have committed to providing staff whose work relocates the opportunity to either move with their work or to receive detailed outplacement support.

The outplacement support on offer will be bespoke for each individual and can include:

- *Competency development and skill realignment to enable opportunities for work, education and development*
- *Vocational learning up to NVQ Level 3 for staff who do not yet have an equivalent qualification, much of which is onsite learning*
- *Employee Support*
- *Career Guidance*
- *Career Counselling*
- *Provision of Capita Career Manager via online support*
- *Discussion with local recruitment agencies/employers*
- *Time off for interviews*
- *Supporting employees locally to explore opportunities outside the organisation.*

16. John Dix – What liabilities will accrue to Barnet at the end of the contract?

When the contract terminates at the end of the 10 year period (unless extended), there will be no liability that Barnet will need to pay to Capita. Barnet Council would be liable for any costs of re-procurement or transitional costs associated with bringing the services back in house.

17. Frances Briers – Glad to see that Labour can pull out in 3 years time how much would this cost?

The Council would have to refund the cost of any investment made by Capita that was not yet reimbursed through the contract fee, any fee that has been discounted in early years and not recovered, and a payment for loss of profit.

18. Barbara Jacobsen – The Council report states that '[O]n 25 November the competitive dialogue procurement process concluded with the submission of Final tenders from BT and Capita', so how was it possible to evaluate and determine a preferred bidder by 22 November [i.e. three days earlier] and who performed the evaluation?

This is a typing error, Final Tenders were submitted by BT and Capita on 25 October 2012. Evaluation was performed by a large group of council officers from service areas in scope and out of scope, plus advisors.

19. Keith Martin – Are councillors who vote in favour of signing the Capita contract protected by the Council's insurance policies against claims for damages for negligence in failing sufficiently to study the widely predicted disastrous financial losses to the Borough which are likely to ensue from signature?

Pursuant to Section 265 of the Public Health Act 1875 and Section 39 of the Local Government (Miscellaneous Provisions) Act 1976 Members, when acting in the course of their duties, within the powers of the authority and in good faith, have statutory immunity and are not personally liable for the actions they take. This probably does not cover a situation where Members have acted negligently. However, in circumstances where they have followed due process and taken and acted upon professional advice from officers and external consultants, it is difficult to foresee a situation where they could be found to have acted negligently and held personally liable, even if the Council incurs a financial loss.

20. Fiona Brickwood – In 2011, Capita acquired a fiduciary services company in Jersey.

<http://www.capita.co.uk/investors/Pages/rns-investor-news.aspx?id=1830>

- a. Has the council investigated whether Capita is already practicing tax avoidance, or intends to do so, or is advising its clients in doing so?
- b. Would the Council decline to go into partnership with a company which practices tax avoidance?

The Council would take very seriously findings of any government department or regulator that found a partner of the Council guilty of illegal activities.

21. John Dix – Will the Corporate Anti Fraud Team still have a role in identifying benefit fraud or will that responsibility pass to Capita?

The work of the Corporate Anti-Fraud Team (CAFT) is not within the scope of the NSCSO contract and will remain with the Council. Capita will have a responsibility to refer cases that it suspects as being fraudulent to CAFT and to take timely action on all recommendations or instructions from CAFT to minimise loss due to fraud. Capita will also be required to provide resources for the completion of anti-fraud initiatives as required by CAFT.

22. John Dix – Will Internal Audit retain a remit to examine and test compliance with the Council's contract procedures when the procurement role passes to Capita?

Capita is responsible for its own internal control and internal audit arrangements with regard to all the services being transferred. It is obliged to share all audit planning and activity with the Council. The Council would only undertake an audit programme itself if any of Capita's arrangements failed to satisfy our requirements as set out in detail in the contract, and any such programme would be funded by Capita. The Council does however have the right to audit Capita's contract delivery at any time, whether it has concerns or not.