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|  | <h2>Urgency Committee</h2> |
| Title | Commercial Settlement of Historic Issues |
| Report of | Leader of the Council |
| Wards | All |
| Status | Public |
| Urgent | Yes |
| Key | Yes |
| Enclosures | None |
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Summary

This report provides detail of the £4.12m settlement negotiated between Capita and the Council to resolve historic commercial issues in respect of the CSG and Re contracts.

Officers Recommendations

The Committee is asked to agree:

- a) The £4.12m historic commercial issues settlement payment to the Council negotiated between Capita and the Council;
- b) The removal of procurement gainshare and guarantee arrangements in the Capita CSG contract; and
- c) To delegate authority to the Chief Executive to finalise the contractual details relating to settlement of the historic commercial issues.

1. PURPOSE OF REPORT

- 1.1 This report provides an overview of the £4.12m cash settlement payment to the Council negotiated between Capita and the Council to resolve historic commercial issues related to the CSG (NSCSO) and Re (DRS) contracts.

The key items that form this proposed commercial settlement are:

- a) Mosaic (the Adults Social care system) – new IT system implementation that experienced issues with timeliness and quality of delivery;
 - b) Development pipeline – delays in delivering housing on council land;
 - c) Increased monitoring associated with financial controls – to cover cost of Grant Thornton and additional council resources (in addition to first payment made in September 2018);
 - d) Procurement gainshare – settling of respective claims; and
 - e) Miscellaneous items – estates compliance (related to 2013 to 2016); and KPI failures related to the Re contract.
- 1.2 In addition, the proposed settlement agreement brings to an immediate end procurement gainshare and guarantee arrangements as set out in the NSCSO Agreement Schedule 4, (Payment Mechanism), paragraph 41.
- 1.3 The Council has paid no procurement gainshare in 2018. Going forward the Council will keep 100 per cent of all savings achieved through better procurement. Procurement gainshare payments to Capita last year were around £2million.
- 1.4 This commercial settlement has been the subject of negotiation, particularly over the last six months. The detailed negotiations have been supported by legal review. The Council's legal advisors have confirmed that the settlement outcome is good value for the Council when compared with the risks, uncertainty and costs associated with formal dispute resolution.
- 1.5 The resolution of these historic commercial issues will enable a renewed focus on service improvement by Capita and the Council.

2 REASONS FOR RECOMMENDATIONS

- 2.1 To settle historic commercial issues in a financially appropriate way.

3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The options considered include:
- Do nothing – This would not be in the Council's best interests as no settlement monies would be received for services that have not met the required standard.
 - Continue to progress disputed items through contractual processes - There would be a need to instigate a range of formal dispute resolution processes under both contracts. The contractual dispute resolution processes would be time and resource consuming with the outcomes uncertain and always subject to the possibility of appeal. This would not offer the certainty and clarity of the proposed commercial

settlement. Legal advice has confirmed that the settlement outcome is good value for the council when compared with these risks and uncertainties.

4 POST DECISION IMPLEMENTATION

4.1 Following this decision:

- The Chief Executive will finalise the contractual details relating to settlement of the historic commercial issues.
- Capita will pay the Council £4.12m in January 2019.
- Procurement gainshare and guarantee arrangements will end with immediate effect.

5 IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 Relevant council strategies and policies include the following:

- Corporate Plan 2015-2020
- Corporate Plan - 2016/17, 2017/18 and 2018/19 Addendums
- Medium Term Financial Strategy
- Performance and Risk Management Frameworks

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

5.2.1 If agreed, this settlement will be recorded within the Council's accounts and will consequently improve the reserves position.

5.2.2 As set out in paragraph 1.4 the settlement represents good value for the Council.

5.3 Social Value

5.3.1 The Public Services (Social Value) Act 2012 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. The Contract Management Toolkit should be used to help ensure that contracts deliver the expected services to the expected quality for the agreed cost. Requirements for a contractor to deliver activities in line with Social Value will be monitored through the contract management process.

5.4 Legal and Constitutional References

5.4.1 The Council's Constitution, Article 7 (Committees, Forums, Working Groups and Partnerships) section 7.17 provides that "If a decision on an issue is required as a matter of urgency [and there is no meeting scheduled] and if time allows under the provisions of the Access to Information Rules then a Committee comprising of the Leader, the Deputy Leader, and the Leader of the Opposition will be called. The decision may be within the terms of reference of another committee, but this will not invalidate the decision as the arrangements to discharge the function in cases of urgency is through a committee

comprising the three specified members. The Committee must consult with the Chairman of the relevant Committee.

5.4.2 The Council's Constitution, Article 10, (Decision Making), section 10.7 allows for an Urgency Committee to be called, comprising of the Leader, the Deputy Leader, and the Leader of the Opposition. The Chairman of the relevant Committee should be consulted. The relevant Committee is Policy and Resources Committee, and the Chairman is the Leader.

5.4.3 The Council's Constitution, Article 2, Members of the Council (Councillors), section 2.3 (e) deals with Members Rights to Refer Matters to Parent Body. The section states: "Non-key decisions, Members' Items and reports to the Urgency Committee cannot be referred."

5.4.4 This paper is considered urgent to ensure timely settlement of cash payment and immediate removal of the procurement gainshare and guarantee arrangements.

5.5 Risk Management

5.5.1 If the settlement is not agreed, disputes will need to be resolved through formal contractual and legal processes. Such processes would be time consuming and expensive, and there is a risk that outcomes could be unsuccessful.

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 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.

5.6.4 Progress against the performance measures we use is published on our website at: www.barnet.gov.uk/info/200041/equality_and_diversity/224/equality_and_diversity

5.7 Corporate Parenting

5.7.1 In line with Children and Social Work Act 2017, the council has a duty to consider Corporate Parenting Principles in decision-making across the council. There are no implications for Corporate Parenting in relation to this report.

5.8 Consultation and Engagement

- 5.8.1 Obtaining customer feedback is part of the contract management process to inform service delivery, service development and service improvement.

6 BACKGROUND PAPERS

- 6.1 Report to Financial Performance and Contracts Committee 9 October 2018 – Contractual Review and Commercial Matters (exempt)
- 6.2 Report to Financial Performance and Contracts Committee 2 July 2018 – Update on Commercial Matters (exempt)
- 6.3 Report to Policy and Resources Committee 19 July 2018 – Review of Capita Contracts – Strategic Outline Case
<https://barnet.moderngov.co.uk/documents/s47263/Capita%20Realignment.pdf>
- 6.4 Report to Financial Performance and Contracts Committee 2 July 2018 – End of Year 2017-18 Contracts Performance Report
<http://barnet.moderngov.co.uk/documents/s47149/EOY%202017-18%20Contracts%20Performance%20Report.pdf>