

	Financial Performance and Contracts Committee 29 January 2020
Title	Year 6 and 7 Capita Contracts Review – Terms of Reference
Report of	Director, Commercial and Customer Services
Wards	All
Status	Public
Urgent	No
Key	Yes
Enclosures	None
Officer Contact Details	Deborah Hinde – Director, Commercial and Customer Services deborah.hinde@barnet.gov.uk 020 8359 2461 Elaine Tuck, Head of Commercial elaine.tuck@barnet.gov.uk 020 8359 4191

Summary
<p>The purpose of this report is to set out the terms of reference for the council's forthcoming reviews of its contracts with Capita. The Customer and Support Group (CSG) contract provides for a review in year 6 of the contract and the Development and Regulatory Services (DRS) contract provides for a review in year 7. As agreed by the Policy and Resources Committee at its meeting on 17th June 2019, the terms of reference for the reviews are to be agreed by the Financial Performance and Contracts Committee, which will also oversee the conduct of the reviews. As agreed by this Committee at its meeting on 19th June 2019, the two reviews will be conducted concurrently, as a single process. This will henceforth be referred to as the Year 6/7 Review.</p>

The terms of reference proposed in this report set out the intended aims of the Year 6/7 Review, together with the proposed approach and outline timescales for achieving them. In conducting the Review, the council will work collaboratively with Capita, with a view to presenting jointly agreed recommendations to this Committee, insofar as that is possible.

The report proposes that the aims of the Review should be to:

- a. Establish the council's long-term vision for service provision and the consequent requirements for each service;
- b. Understand the current performance of each service, including special projects, in terms of service quality and value for money;
- c. Develop the future delivery strategy for each service, post-2023; and
- d. Agree any changes required to the existing contractual arrangements between now and 2023 (i.e. the end of the existing contracts).

In order to achieve these aims, the report proposes a comprehensive review process, which will consider:

- The council's future needs and aspirations
- Best practice from other organisations
- Analysis of the market
- Performance against contractual obligations
- User/customer satisfaction and feedback (including the outcome of public consultation in respect of the Strategic Contract Review conducted in 2019)
- Benchmarking information on cost and quality
- Special projects
- Financial modelling

It is proposed that, due to the complexity of the task, the Review be carried out on a phased, service-by-service basis, always ensuring that the interdependencies between services are properly considered.

It is anticipated that the Review will be conducted throughout 2020, with reports being brought to each meeting of this Committee during the year, setting out:

1. The outcome of work to date;
2. Any recommendations arising from that work;
3. Details of the next phase of the work.

If considered necessary, in consultation with the Chairman, additional meetings of this Committee will be arranged to enable the proper involvement of Members and public scrutiny at all stages of the process.

Any recommendations agreed by this Committee will be the subject of further reports to the Policy and Resources Committee in due course.

The report also provides an update on the work that officers were instructed to carry out by the Policy and Resources Committee on 17th June 2019 in respect of the Pensions Administration service.

Officer Recommendations

That the Committee:

- 1. Agrees that the aims of the Year 6/7 Review of Capita contracts should be to:**
 - a. Establish the council's long-term vision for service provision and the consequent requirements for each service;**
 - b. Understand the current performance of each service, including special projects, in terms of service quality and value for money;**
 - c. Develop the future delivery strategy for each service, post-2023; and**
 - d. Agree any changes required to the existing contractual arrangements between now and 2023 (i.e. the end of the existing contracts).**
- 2. Agrees the approach to conducting the Review, as set out in paragraphs 1.15 to 1.24 of this report;**
- 3. Notes the outline timeline, set out in paragraph 1.32 of this report; and**
- 4. Notes the work that has been carried out to date in respect of the Pensions Administration service, set out in paragraphs 1.34 and 1.35 of this report.**

1. WHY THIS REPORT IS NEEDED

Background

- 1.1. The council has two strategic contracts with Capita. The first, the Customer and Support Group (CSG) contract, is for the delivery of the council's "back office" functions, including customer services, information technology, revenues & benefits and estates. The second relates to the provision of development and regulatory services (DRS), including planning, highways, environmental health, regeneration and cemetery and crematorium. This contract is delivered through a joint venture between Capita and the council, known as Regional Enterprise Ltd (RE).
- 1.2. The CSG contract commenced in September 2013 and the DRS contract commenced in October 2013. Both contracts were entered into for a 10-year period, with the option to extend for up to five years. In broad terms, the core fee paid by the council for the CSG contract was set at approximately £25m per annum. The core fee for the DRS contract was set at approximately £15.4m per annum, which is in large part off-set by guaranteed income of

approximately £14.8m per annum. These figures are subject to indexation from contract commencement. Total expenditure on the two contracts from commencement to the end of financial year 2018/19, including additional work carried out either as special projects or contract changes, is £254m in respect of the CSG contract and £132m in respect of the DRS contract.

- 1.3. In addition to the contractual arrangements for the ongoing management of service performance and improvement, both contracts contain specific provisions for the periodic review of the contracts as a whole. Accordingly, the outcome of the year three review of the CSG contract was reported to this Committee on 15th November 2016. The outcome of the year four review of the DRS contract was reported on 28th November 2017. Both of the reviews acknowledged the significant financial benefits that the contracts had delivered for the council. Further, they concluded that service performance (as measured against contractual performance indicators) was generally meeting or exceeding requirements. However, both reviews also acknowledged that there had been significant concerns with some elements of service provision and made recommendations to address these.
- 1.4. The contracts also include provision for a year six review (CSG) and a year seven review (DRS). These reviews provide a mechanism for agreeing any changes required up to 2023, as well as providing for consideration of any elements of the contracts that may be extended for a further period of up to five years, beyond 2023.
- 1.5. Notwithstanding these review provisions, the council initiated an additional review of the contracts in July 2018, with a view to taking stock of the partnership with Capita as a whole. As part of that review, a comprehensive public and best value consultation exercise was carried out to seek views on the services provided under the contracts and how they might be delivered in the future. As a result of that review, the following services have been returned to the council:

On 1st April 2019:

Finance
Strategic HR

On 1st October 2019:

Safety, Health and Wellbeing
Skills, Employment and Economic Development

- 1.6. The final report on that review was considered by the Policy and Resources Committee on 17th June 2019. The Committee agreed that, in order to directly address concerns raised through the consultation exercise regarding inter-dependent services, the remainder of the review should be conducted through the year six (CSG) and year seven (DRS) contract reviews. In reaching this decision, it was acknowledged that considering the services provided under each of the contracts in turn would enable a more holistic approach to be

taken to reviewing related services. It would also facilitate further consideration of a broader range of delivery options, such as partnerships with other councils, as suggested in the public and best value consultation, thereby resulting in a robust and coherent commissioning strategy for the future delivery of these services.

- 1.7. The Policy and Resources Committee also agreed that the terms of reference for and progress on the year six and seven reviews of services should be reported to the Financial Performance and Contracts Committee. Any resulting recommendations would be made in a further report to the Policy and Resources Committee.
- 1.8. The Policy and Resources Committee also agreed that further consideration should be given to the future arrangements for those staff involved in the management and governance of the Brent Cross Cricklewood development scheme. As a result of this, it has been agreed that defined members of the core, integrated programme management team will transfer to the council, upon completion of the necessary commercial discussions. Ahead of this, the Programme Director transferred to council employment on 1st January 2020.
- 1.9. Further, the Policy and Resources Committee instructed the Director of Finance to put appropriate measures in place to enable alternative service provision arrangements to be made for Pensions Administration, should the need arise, with a view to bringing a further report to Policy and Resources Committee in due course. An update on this is provided in paragraphs 1.34 and 1.35 of this report.
- 1.10. At its meeting on 19 June 2019, Financial, Performance and Contracts Committee noted a report on 'Review of Capita Contracts – Lessons Learned' and agreed that these would inform any future insourcing activity, as would analysis of the financial information required in order for the Committee to make informed decisions. That Committee also confirmed that the two reviews should be conducted as a single exercise.

Terms of reference

- 1.11. The terms of reference for the Review have been discussed with Capita, who will play an important part in the process, particularly in terms of information provision and developing proposals for service improvement and innovation. Capita have confirmed that they will work with the council to achieve the aims set out below.

Aims of the Review

- 1.12. Both contracts set out a mechanistic approach to conducting the year six and year seven reviews, without actually being completely clear about their

purpose. The council believes that the process should be designed to answer two key questions:

1. What should happen to these services after 2023? and
2. What needs to change between now and the end of the contracts (2023)?

1.13. To answer these questions effectively, it is necessary to consider the broader context within which these contracts are being delivered. The environment within which the council is operating has changed significantly since the contracts commenced in 2012. Political, economic, social and technological developments mean that the needs for and expectations of these services, both in terms of what is delivered and how it is delivered, have moved on considerably from when the contracts were first drafted. Members will be aware that following the appointment of a new Capita Chief Executive and the publication of the company's 2017 end of year results, Capita set out a new strategic direction for the organisation, with a focus on delivering technology-enabled services, at scale, and concentrating on their core capabilities. Whilst services have changed and adapted over the years, this Review provides an opportunity to steer the evolution of these services in a structured and holistic manner that reflects the changing circumstances of both organisations.

1.14. To that end, it is proposed that the council's aims for the Review should be to:

What should happen to these services after 2023?

- a. Establish the council's long-term vision for service provision and the consequent requirements for each service;
 - b. Understand the current performance of each service, including special projects, in terms of service quality and value for money;
 - c. Develop the future delivery strategy for each service, post-2023; and
- What needs to change between now and the end of the contracts?
- d. Agree any changes required to the existing contractual arrangements between now and 2023 (i.e. the end of the existing contracts).

Proposed approach

1.15. As mentioned above, it is proposed that the Review will be undertaken as a **combined review** of the CSG and DRS contracts. This will enable better consideration of any interdependencies between services, as well as permitting more efficient use of resources in supporting the programme.

1.16. The Review will be carried out on the basis of **working collaboratively** with Capita to identify and assess the viability of various options and innovations. This will enable the council to access the benefit of Capita's work with other organisations, whether public or private sector, as well as ensuring that the Review's recommendations are robust and deliverable.

- 1.17. The starting point for the consideration of future options will be an assessment of the **council's future needs and aspirations**. In general terms, this will be based on assessing the implications of the council's corporate plan, Barnet 2024, but with a more in-depth assessment of service-specific needs and aspirations. The implications of the council's medium-term financial strategy challenges will also be considered.
- 1.18. The Review will consider current **best practice from other organisations**, both public and private sector. Capita's connections with other organisations will assist this, but the council will also seek to identify potential case studies through its own network of contacts.
- 1.19. There will need to be further **analysis of the market** in respect of these services, which has changed significantly since these contracts were let. This will consider the current market appetite for delivering these services, whether collectively or individually, as well as considering alternative delivery models, such as partnerships with other councils or the voluntary sector.
- 1.20. The Review will be informed by an **assessment of performance against contractual obligations**. The year three and year four reviews included reports setting out a detailed assessment of performance against key performance indicators (KPIs) and contractual commitments from the start of the contracts. Whilst entirely relevant and appropriate for those reviews, it is considered that the focus of this Review should be on future needs, so analysis of past performance will be proportionate and based, where possible, on a broader, more qualitative assessment of performance and service capabilities.
- 1.21. An important part of the Review will be an assessment of **user/customer satisfaction and feedback**. This will include the outcomes of internal user satisfaction surveys and the comprehensive public and best value consultation exercise that was carried out in 2019. Where appropriate, further focus groups or surveys will be commissioned to secure more specific and qualitative feedback.
- 1.22. Where available, **benchmarking information on cost and quality** will be used to inform the assessment and development of future options.
- 1.23. In addition to the services provided under the core contracts, both contracts provide for the commissioning of **special projects** through what is known as the SPIR process. Expenditure on special projects has been significant through both contracts and, whilst it should be noted that this expenditure relates to work that would have been required regardless of supplier, it is appropriate to ensure that the SPIR route continues to represent good value for money.
- 1.24. The overall price for the contracts and the apportionment of that to individual services within the council was set in 2012. It is highly likely that the actual cost of delivering services has changed considerably since then, so there will

be a need to carry out an appropriate level of **financial modelling** to support the development of robust recommendations.

Outputs

- 1.25. The key outputs of the Review will be reports to this Committee, which, for each service, will set out:
1. Recommendations on service and contract changes required up to 2023;
 2. A future delivery options appraisal report; and
 3. An implementation roadmap (including identification of any potential commercial constraints on delivery).
- 1.26. These reports will be informed by:
- A performance report on each service (including customer satisfaction)
 - Benchmarking/best practice report(s)
 - Financial modelling report(s)
 - Market analysis report(s)
- 1.27. In respect of future delivery options, the full range of options will be considered for each service. This will include:
- bringing services in-house
 - re-procurement through the open market
 - development of shared service arrangements
 - extension of the existing contracts
- 1.28. It should be noted that both contracts specifically provide for consideration of their extension, in whole or in part, for a period of up to five years and that this matter should be considered as part of this Review process. It is anticipated that any recommendations on extending elements of the contracts would only be made on the basis that they are contingent upon delivery of agreed actions and improvements. Where appropriate, the options appraisal reports will consider groups of services together, where interdependencies are such that consistency is necessary in respect of any decisions on future delivery arrangements.
- 1.29. The options appraisal and supporting business cases will be developed using the Treasury Five Case Business model. At this stage, it is anticipated that business cases will be developed to “outline” stage, with the development of any full business cases that are required being commissioned on the basis of initial consideration by this Committee.

Process and timeline

- 1.30. Robust governance arrangements will be put in place to manage the Review process and ensure that it is delivered in a timely manner. There will be joint council/Capita workstreams covering individual service areas and providing cross-cutting support on, for example, market assessment, financial assessment and communications, with regular reports to this Committee.
- 1.31. As set out in paragraph 5.2.1, resource requirements will include programme management, specialist input (including procurement and legal) and additional commercial capacity.
- 1.32. In order to manage the workload, an over-lapping phased approach is proposed, as follows:

January to June	Highways Customer Services (including RE service hub and Social Care Direct) Information Technology Revenues & Benefits Estates
April to September	HR Finance systems Accounts Payable Procurement Strategic Planning Regeneration Land Charges
July to December	Cemetery and Crematorium Building Control Land Charges Environmental Health Trading Standards and Licensing Planning and Development Management

- 1.33. The proposed phasing has been informed by inter-dependencies between services, the existence of known service challenges and the complexity of current delivery arrangements. This includes, for Highways, the fact that the Conway-Aecom contract is due to end on 31st March 2021 and a holistic approach is required to determine the most appropriate future delivery model for the highways service in its entirety. The Review will include consideration of the implications for the RE joint venture and partnership structures arising from any changes that are proposed.

Pensions Administration service

- 1.34. As mentioned above, the Policy and Resources Committee on 17th June 2019 instructed the Director of Finance to put appropriate measures in place to enable alternative service provision arrangements to be made for Pensions Administration, should the need arise, with a view to bringing a further report to Policy and Resources Committee in due course. This work has been carried out as instructed and an appropriate contingency plan is now in place.
- 1.35. Since that report, the Pension Regulator has indicated that they do not intend to take further regulatory enforcement action against the pension scheme administrator and have acknowledged the improvements that have been made in the control environment. Capita continues to implement the remediation plan, but it is not yet complete. Whilst it is acknowledged that Capita has expended considerable effort and resources in seeking to return the Pension Administration service to an acceptable position, concerns remain as to whether we have best long-term solution in place for the Pensions Administration service. As a result of this, the council is engaging with Capita to consider the future delivery options for this service, ahead of this broader Year 6/7 Review process. These discussions are proceeding in a constructive manner and it is anticipated that recommendations on this will be made shortly.

2. REASONS FOR RECOMMENDATIONS

- 2.1. Members are asked to note the terms of reference which will enable a collaborative approach with Capita and exploration of alternative options within a realistic timescale. Delivery options are deliberately broad to enable implementation as soon as possible, through a phased approach or on expiry in 2023 as the circumstances and evidence may dictate.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1. Conducting the review over a shorter period was considered and ruled out as experience has shown that the Capita contracts are complex and insufficient time for the review may result in adverse outcomes. A longer period of time for the review was also considered and ruled out as the review will necessarily require significant resource from the council and Capita which has financial implications and has the potential to detract from service quality. Timeframes will be kept under active review to ensure they remain appropriate.

4. POST DECISION IMPLEMENTATION

- 4.1. Following Committee decision, the council will proceed to implement the Year 6/7 Review in line with the Terms of Reference contained within this paper.

5. IMPLICATIONS OF DECISION

5.1. Corporate Priorities and Performance

5.1.1. The aims of this Review are consistent with the council's Corporate Plan, Barnet 2024, in that it aims to ensure high quality, good value services.

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

5.2.1. The Capita contracts collectively have a value of approximately £80m per annum (including core fee, income and special projects). It is anticipated that around £500k, less than 1% of the value of the contracts, will be required to carry out the Year 6/7 Review. This will be required for programme management, specialist input (including procurement and legal) and additional commercial capacity. Combining the reviews will assist in minimising the cost.

5.2.2. The costs involved are justified by the scale of the contracts and the importance to the council of delivering best value going forward. The costs are being funded from reserves, which were enhanced by the £4.12m commercial settlement agreed by the Urgency Committee on 30 November 2018.

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. Before commencing a procurement process, commissioners should think about whether the services they are going to buy, or the way they are going to buy them, could secure these benefits for their area or stakeholders.

5.4. Legal and Constitutional References

5.4.1. Council Constitution, Article 7 (Committees, Forums, Working Groups and Partnerships) provides that Financial Performance and Contract Management Committee is responsible for the oversight and scrutiny of the council's major strategic contracts. It may 'at the request of the Policy & Resources Committee and/or theme committees consider matters relating to contract or supplier performance and other issues and making recommendations to the referring committee.' Policy and Resources Committee on 17th June 2019 agreed that terms of reference and progress on the Year 6/7 Review should be reported to the Financial Performance and Contracts Committee. Any

resulting recommendations would be made in a further report to the Policy and Resources Committee.

5.4.2. Legal advice will be sought as required, including on contractual, public procurement, consultation, and employment related matters, to ensure that the council acts lawfully at all times.

5.4.3. Best Value public consultations as required by Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007) will be carried out as appropriate in the context of the Review.

5.4.4. Consultation with staff will be carried out as appropriate and the council will comply with its legal obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) (TUPE) in connection with the transfer of any affected staff.

5.5. Risk Management

5.5.1. If the Year 6/7 Review is not carried out there is a significant risk that services will not be able to meet changing needs, take advantage of innovations and provide value for money.

5.5.2. Key risks associated with the Review include:

- Time and/or resource constraints lead to the Review not being carried out effectively, resulting in poor decision-making
- Relationship with Capita deteriorates during or as a result of Review outcomes, leading to poorer service delivery
- Lack of clarity on scope and deliverables from the Review results in disappointed and/or confused stakeholders
- Resource requirements and/or organisational focus on the Review leads to deterioration in service quality or seeking value for money.

5.5.3. Risks will be monitored and mitigating actions are being put in place, including through close partnership working with Capita, ensuring appropriate resourcing (please refer to 5.2.1) and through the detailed planning stage.

5.6. Equalities and Diversity

5.6.1. Equality and diversity issues are a mandatory consideration in the council's decision-making process. Decision makers should have due regard to the public-sector equality duty in making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. The equalities impact will be revisited on each of the proposals as they are developed. Consideration of the duties should precede the decision. It is important that Policy and Resources Committee, or the officer decision maker if the decision is delegated to them, has regard to the statutory grounds in the light of all available material such as consultation responses. The statutory

grounds of the public-sector equality duty are found at section 149 of the Equality Act 2010.

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- (a) Tackle prejudice, and
- (b) Promote understanding.

Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act. The relevant protected characteristics are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race,
- Religion or belief
- Sex
- Sexual orientation
- Marriage and Civil partnership

5.6.2. Equalities Impact Assessments will be undertaken where required as the review progresses.

5.7. Consultation and Engagement

Public consultation and Best Value consultation

- 5.7.1. Extensive consultation has taken place through the review of Capita contracts as reported to Policy and Resources Committee on 17th June 2019. The Year 6/7 Review outlined in this report is a continuation of the review of Capita contracts and will take into account the feedback already provided, including when developing vision and commissioning options. Additional stakeholder engagement will be undertaken with council staff and with Barnet Group and Cambridge Education who also use Capita services, as these service users were not well represented in previous consultation.

Staff consultation

- 5.7.2. Any proposals that involve the transfer of services from one provider to another (including transfer in-house or to alternative providers) will entail a statutory requirement to provide information and consult with staff representatives under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE). These requirements will be triggered once a decision to transfer services has taken place and prior to any transfer being effected.
- 5.7.3. However, it should be noted that it is good practice to engage with all staff from the point at which any potential for transfer of services becomes generally known, throughout the decision making and transition periods and for a period post transfer (if a transfer takes place). Early engagement with staff assists in managing the risks of staff becoming unsettled or distracted as outlined above. It also assists in preventing loss of key staff during the decision making and transition periods, as well as ensuring the council continues to attract high calibre individuals by maintaining its reputation as an employer of choice.
- 5.7.4. Likewise, early engagement and ongoing dialogue with staff representatives is also good practice, with the aim of early identification and resolution of issues, reaching agreement on processes and approach to managing the workforce aspects of transfer and addressing any issues that may arise at the earliest opportunity so that statutory consultation and the transition itself can run smoothly for affected staff.

5.8. Insight

- 5.8.1. Multiple qualitative and quantitative data and information sources will be used to derive insight during the review.

5.9 Corporate Parenting

- 5.9.1 Capita provide a small number of services to care leavers living in Barnet, most notably in relation to the revenues and benefits service. The continued

focus on high quality services through the Review process will ensure that these services continue to be provided.

6. BACKGROUND PAPERS

- 6.1. Report to Financial Performance and Contracts Committee, 15th November 2016, year three review of CSG contract:
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=693&MId=8796>
- 6.2. Report to Financial Performance and Contracts Committee, 28th November 2017, year four review of RE contract:
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=693&MId=9134>
- 6.3. Report to Policy and Resources Committee, 19th July 2018, Review of Capita Contracts – Strategic Outline Case:
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MId=9725>
- 6.4. Report to Policy and Resources Committee, 11th December 2018, Review of Capita Contracts:
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MId=9460>
- 6.5. Report to Policy and Resources Committee, 17th June 2019, Review of Capita Contracts:
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MId=9850>