



Financial Performance and Contracts Committee

27 October 2020

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| Title | Year 6/7 Review of Capita Contracts |
| Report of | Director, Commercial and Customer Services |
| Wards | All |
| Status | Public |
| Urgent | No |
| Key | No |
| Enclosures | None |
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Summary

The purpose of this report is to provide an update on the Year 6/7 Review of Capita contracts. The report also provides an overview of Capita's half-year results, which were published in August 2020.

Officer Recommendations

That the Financial Performance and Contracts Committee:

- 1. Notes that work on the Year 6/7 Review has restarted;**
- 2. Notes that a further report on the detailed plan for conducting the Review will be brought to this Committee in December 2020; and**
- 3. Notes Capita's half-year results.**

1. WHY THIS REPORT IS NEEDED

Year 6/7 Review

- 1.1. At its meeting on 29th January 2020, the Financial Performance and Contracts Committee agreed terms of reference for the Year 6/7 Review of Capita contracts.
- 1.2. A report was published for consideration by the Financial Performance and Contracts Committee that was scheduled to take place on 18th March 2020, but was cancelled due to the Covid-19 pandemic. That report set out progress on the Review, which at that point was well under way. Joint working groups had been established for each of the phase 1 services:
 - Highways
 - Customer Services (including RE service hub and Social Care Direct)
 - Information Technology
 - Revenues & Benefits
 - Estates
- 1.3. The early focus of the working groups had been on carrying out an analysis of the service's strengths, weaknesses, opportunities and threats (SWOT) and exploring the potential future vision for the service. Cross-cutting workstreams on Financial Assessment and Performance had also been mobilised to support the work of the service-specific joint working groups.
- 1.4. The report also set out initial proposals to ensure the effective engagement of Members of the Committee and the public in the Review process.
- 1.5. As the council prepared for the Covid-19 pandemic during the early part of March 2020, a number of officer meetings associated with the Review were cancelled, to enable key service personnel to focus on business continuity planning and preparation. IT, Customer Services and Estates were particularly involved in supporting the broader council preparation for the pandemic. On 17th March 2020, it was agreed, in consultation with the Chairman of the Financial Performance and Contracts Committee, to pause all work on the Review for a two-week period to support the wider business continuity preparation.
- 1.6. On Sunday, 22nd March 2020, the council received the instruction from London Strategic Coordination Group and London Local Authority Gold to move to the provision of critical services only. As a result of this, the decision was made, in consultation with Capita colleagues, to suspend the Year 6/7 Review until further notice. This decision was subsequently ratified by the Urgency Committee on 27th April 2020.
- 1.7. At its meeting on 15th June 2020, this Committee received a report setting out the latest position in respect of the Review. At that point in time, the council

remained in emergency response mode and the primary focus was on delivering critical services, although non-critical services were being stood up, where the capacity existed so to do. The Committee was advised that all of the services involved in phase 1 of the Review, as well as other services provided by Capita, were heavily involved in that emergency response.

- 1.8. The Committee noted that the suspension of work on the Year 6/7 Review and the exemplary response of Capita colleagues in supporting the council's response to the Covid-19 pandemic. That response has continued through the summer and into the autumn.
- 1.9. As lockdown has gradually lifted, RE colleagues have been heavily engaged in supporting the council's enforcement efforts. Revenues and Benefits colleagues have been focussed on the payment of grants to businesses and are now supporting the implementation of "self-isolation" grants. Whilst those services remain very much in pandemic-response mode, other services have moved forward into the recovery phase. Significant work has been required to return services to a more normal operating mode and many, such as IT, Estates and Customer Services are now dealing with a combination of business as usual demands, whilst also seeking to clear a backlog of work or pent-up demands that built up during the height of the pandemic. It should be noted that the pressures this creates fall as much on council officers as they do on Capita colleagues.
- 1.10. Notwithstanding the ongoing challenges, work is re-commencing on the Review process. This has had to be sensitive to the ongoing demands on service colleagues and has focussed primarily on considering how we are going to resource cross-cutting activity, such as financial modelling and contract performance analysis. To that end, the Review support team is starting to progress the commissioning of external support to provide benchmarking and market analysis. The team is also starting to work with colleagues in the council's consultation team to develop the approach to consultation and engagement. This will all, in due course, provide important information to support the work on individual services and inform the development of options for consideration by Members.
- 1.11. Work is also starting to develop a detailed timeline for the Review, albeit against the backdrop of the second wave of the pandemic and the pressure that this continues to have on both senior council officers and their opposite numbers within Capita. That timeline will have to take into account the officer and Capita time that can, realistically, be applied to the Review as the pandemic continues. It will incorporate appropriate Member engagement activity, as set out in the report of 18th March 2020. At the time of writing, the potential scale and impact on the council's priorities of a second wave cannot be assessed, so there will be a continuing need to remain agile in the approach and response. Whilst no changes to the detailed terms of reference and overall approach to the Review are proposed at this point, the need to keep these under review in light of the ongoing impact of the pandemic continues. Officers will continue to monitor the situation, with a view to

bringing a further report to this Committee in December 2020. The ongoing dialogue with Capita colleagues will also continue, to ensure the necessary alignment between the parties.

Capita half-year results

- 1.12. Capita published its first half-year results for 2020 on 18th August 2020. These can be accessed using this link: <https://www.capita.com/news/capita-plc-half-year-results-2020> Jon Lewis, Capita's Chief Executive Officer, summarised the position as follows:
- “Capita and its people faced a challenging first half of the year, like many other companies. Thanks to our transformation progress over the last two years - and the hard work and professionalism of our colleagues - we were able to deliver a strong and decisive operational response to the COVID-19 crisis.
- “However, this crisis has come in a pivotal year for Capita when we had expectations of beginning to generate revenue growth and sustainable cash flow.
- “Instead, we have had to focus on managing our way through the crisis, while accelerating some strategic decisions, including our plan for the disposal of Education Software Solutions, a standalone business in our Software division.
- “We expect to make further disposals which, alongside other measures, will strengthen the balance sheet and help build towards a more focused, sustainable Capita for the long term. These are unprecedented times and we need to adapt but our strategy remains the right one.”
- 1.13. In response to these results, Capita's share price dropped from 35.88p at close of trading on 17th August 2020 to 28.70p at close on 18th August 2020. The share price recovered to 33.03p the following day and has hovered around the 30p mark, plus or minus 3p, since then. At the time of writing, the share price was 31p.
- 1.14. Of most interest to the council are the accounting indicators set out in the “financial distress” sections of the contracts with Capita. These indicators 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.
- 1.15. The council's commercial team reviews these indicators on a regular basis and reports the latest performance to this Committee. Based on the 2020 half-year results, the financial ratios remain well clear of the values that would trigger a financial distress event. The contractual trigger levels are commercially confidential, but actual performance on the ratios is public information. The ratios are currently as follows:

Net Total Interest Cover Ratio – 7.6 times (was 10.8 at full-year 2019) – higher is better

Total Net Debt to EBITDA Ratio – 1.9 times (was 2.1 at full-year 2019) – lower is better

2. REASONS FOR RECOMMENDATIONS

- 2.1. This report provides an update on the position in respect of the Year 6/7 Review in light of the Covid-19 pandemic and on Capita's latest half-year results.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1. Not relevant to this report.

4. POST DECISION IMPLEMENTATION

- 4.1. Work on the Year 6/7 Review will continue and a further report will be brought to this Committee in December 2020.

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

will be funded by a non-recurrent allocation from the contingency budget, subject to the approval of Policy and Resources Committee.

- 5.2.3. Resources that have been employed to support the Review have been redeployed to support the delivery of critical services during the Covid-19 pandemic. There may be additional resource implications associated with any extension to the overall timescales for delivery the Review. These will be estimated in due course.

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. 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.
- A further wave of the Covid-19 pandemic further delays work on the Review.

5.5.2. 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 the Committee 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.

5.6.2 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.

5.6.3 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.

5.6.4 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.

5.6.5 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.

5.6.6 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

5.6.7 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. As previously reported to this Committee, 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 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. Further engagement will take place on specific services, where further insight is required, through the use of targeted questionnaires and focus groups. Additional stakeholder engagement will also be undertaken with council staff and with Barnet Group and the Barnet Education and Learning Service (BELS) 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, 29th January 2020:

<https://barnet.moderngov.co.uk/documents/s57531/Year%206%20and%20Y7%20review%20ToR.pdf>

6.2. Report to Financial Performance and Contracts Committee, 18th March 2020:

<https://barnet.moderngov.co.uk/documents/s58379/Year%2067%20Review%20of%20Capita%20Contracts.pdf>

6.3. Report to Financial Performance and Contracts Committee, 15th June 2020:

<https://barnet.moderngov.co.uk/documents/s58926/Yr%206-7%20Review%20FPC%20report.pdf>