

	<h2 style="text-align: center;">Financial Performance and Contracts Committee</h2> <p style="text-align: center;">17 March 2021</p>
Title	Year 6/7 Review of Capita Contracts
Report of	Chief Executive
Wards	All
Status	Public, with exception of Appendix A, which is exempt by virtue of paragraph 3 of Schedule 12A Local Government Act 1972, because it contains information relating to the financial and business affairs of the council and Capita
Urgent	No
Key	No
Enclosures	Appendix A – Potential Categorisation of Services with Commercial Considerations (Exempt)
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Summary
<p>The purpose of this report is to provide an update on the Year 6/7 Review of Capita contracts.</p> <p>The report outlines the challenges and delays to the Review process and timelines that have occurred (and continue to occur) as a result of the Covid-19 pandemic and recommends a revised approach to conducting the Review, which involves carrying out a limited review to identify, in principle, those services that should be extended for a period of time and those services that should be re-procured or brought in-house at the end of the original term.</p>

Officer Recommendations

That the Financial Performance and Contracts Committee:

- a) Notes the challenges and delays to the Review process;**
- b) Agrees the revised approach, as set out in paragraph 2.6 of the report;**
- c) Agrees that an informal cross-party working group may act as a sounding board for the development of proposals;**
- d) Notes the content of exempt Appendix A; and**
- e) Notes that a further report recommending the future direction for each service will be brought to this Committee in June 2021.**

1 WHY THIS REPORT IS NEEDED

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. Those terms of reference set out a comprehensive approach, which would take approximately 12 months to complete. Through that process, we would seek to:

1. Establish the council's long-term vision for service provision and the consequent requirements for each service;
2. Understand the current performance of each service, including special projects, in terms of service quality and value for money; and
3. Develop the future delivery strategy for each service, pre- and post-2023.

Thereby answering two key questions:

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

With the overarching priority of ensuring that Barnet residents receive the best possible services that we can afford and at a competitive price.

- 1.2 As the Covid-19 pandemic started to take hold in March 2020, council officers were required to focus their attention on the council's pandemic response and maintaining essential services, so work on the Review was suspended, as noted by this Committee at its meeting on 15th June 2020.
- 1.3 At its meeting on 27th October 2020, the Committee considered a further report, which set out the ongoing challenges to the Review process that were caused by the continuing pandemic response. The report highlighted that work on the Review was re-commencing, but noted that this was against the backdrop of an approaching second wave of the pandemic. At that point, the

potential scale of the second wave and its impact on the council's priorities could not be assessed. The report advised that officers would continue to monitor the situation and that it might be necessary to review the agreed terms of reference and approach in light of the ongoing impact of the pandemic.

- 1.4 Shortly after that meeting, a second national lockdown was announced. This was in place throughout November and was followed by the re-application of a tiered system of restrictions. On 2nd December 2020, London was placed in tier 2. On 16th December 2020, it was moved into tier 3 and five days later it was moved into tier 4. A further national lockdown was implemented on 5th January 2021. At this time, there remains little capacity to engage effectively with the Review process, as it was originally envisaged in January 2020.
- 1.5 A key function of the Year 6/7 Review is to determine the council's position regarding extension of the CSG and RE contracts. The contracts are due to expire in September 2023 (CSG) and October 2023 (RE). Whilst this may seem to be some distance into the future, there are significant lead-in times required for the orderly implementation of whatever decisions are made in this respect. In particular, it should be noted that any re-procurement activity would require an 18-24 month lead-in. This suggests that any decisions that result in re-procurement would ideally be taken by about September 2021. In addition, the council is contractually obliged to give notice of its future intentions by April 2022 at the latest for the RE contact and by September 2022 for the CSG contract.
- 1.6 In respect of timescales, it is also necessary to consider the timing of any substantial decisions in relation to council elections in May 2022, the pre-election period for which will commence in mid-March 2022.
- 1.7 The Review process is also designed to identify any changes in service that are required during the later years of the contracts. The CSG and RE contracts are nearly a decade old now, so this is an important opportunity to step back and review. The model of delivery of transactional and technology enabled services has led in many instances to the provision of good services at a lower cost than was previously the case. However, the scale of transformation and change has slowed in recent years and the Review is needed to identify those services where there would be benefit from extending, if there was sufficient investment made available to continue to develop services. Any further delay in making these decisions will also delay the opportunities for investment and improvement.
- 1.8 Experience has also shown that the model of delivery for some services is too complex and the Review is needed to address this. Furthermore, it is acknowledged that, as the market for local government services has changed over the years, the scope for Capita to add further value to some services that remain based in Barnet is limited. There are also ongoing performance issues, notably in highways and estates, that may require a different approach in order to achieve further service improvement.

2 REASONS FOR RECOMMENDATIONS

- 2.1 The ongoing impact of the pandemic means that a different approach to carrying out the Review is now required, in order to address the three key issues of:
 1. Senior officer capacity;
 2. Timelines; and
 3. Service improvement.
- 2.2 Officers have identified four options for achieving the key objectives of the Review, as outlined in paragraph 1.1 above.
- 2.3 The first option is to wait until there is capacity to undertake the Review as set out in the terms of reference and process previously agreed. This approach is not recommended, as to carry out the full Review process would take approximately 12 months, which is not compatible with the timescale pressures outlined above. Any further delays would probably put the council into a position where it would have to extend the two contracts in their entirety for at least a year. Extension terms in such circumstances are unlikely to be favourable to the council. This approach would also further delay the opportunity to secure additional investment in the services.
- 2.4 The second option would be to allow both contracts to expire at the end of their 10-year term, with a view to either re-procuring or bringing services in-house. This approach would allow a degree of planning certainty and would allow resources to be focussed on implementing revised service delivery arrangements. However, this could prove to be a high-cost option and the logistics of dealing with services that are currently provided from elsewhere in the UK would be complex. Furthermore, such a decision would result in the service provider's focus changing to contract exit mode, which would severely limit the opportunities to drive any service improvement over the remaining term of the contract.
- 2.5 The third option would be to give notice to extend both contracts by up to the permitted five-year period. This would again provide a degree of planning certainty and would leverage additional investment and service improvement. However, an early commitment in this respect would probably reduce the council's negotiating strength overall. It could also be an outcome that is not the most appropriate for some services.
- 2.6 The fourth option is to undertake a limited review to identify, in principle, those services that should be extended for a period of time and those services that should be re-procured or brought in-house at the end of the original term. This would involve dealing with services in three categories:

1. Retained services – interim extension of two-three years for key technology-based services, where return in-house would be unlikely to be a viable option and a reasonable extension would generate additional investment. The agreement of any extension would be dependent upon robust investment and improvement proposals from the service provider;
 2. Returning services – confirm contract will expire in 2023 for services where there is unlikely to be much scope for the service provider to add further significant value, the market for re-procurement is limited and the financial case can be made to return them to the council; and
 3. Further review services – interim extension of one-two years for services where the case for returning, re-procuring or extending is unclear and a more detailed review is required to determine the best strategic option.
- 2.7 This approach would enable the workload to be spread over a longer period, to accommodate senior officer capacity issues. Following some initial work, it would provide a degree of planning certainty and would ensure that the depth of detailed review activity was commensurate to the needs of each service. It would also generate further investment in key services by the service provider. Whilst longer-term decisions would be deferred to beyond the May 2022 elections, it could potentially lead to extensions being undertaken in two phases. It could also delay the return or re-procurement of some services, for which that is ultimately decided to be the best strategic option.
- 2.8 This is the recommended option, as it is considered that this provides the most appropriate balance of benefits and risks. It also provides the maximum flexibility within the council's resource availability at this time of continued uncertainty.

3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 A further solution to the resourcing issues would be to bring in external consultancy support to carry out the Review. Whilst this would appear to address the capacity issue, it is considered that this is not compatible with the principle that the council's senior officers should "own" and be fully accountable for the services that fall within their remit. It would, in effect, outsource the key decision-making processes that will determine the future direction of these services.

4 POST DECISION IMPLEMENTATION

- 4.1 Work on the Review will continue, with a view to confirming the proposed categorisation of individual services as quickly as possible. It is anticipated that recommendations on this will be set out in a further report to this Committee in June 2021. The recommendations will be based on the following factors:

- Overall performance
 - Scope for further investment and innovation
 - Scope for service provider to further add value
 - Logistical considerations
 - Financial viability of returning the service in-house
 - Clarity of strategic direction for the service
- 4.2 Ahead of that options appraisal, an initial assessment of the likely categories is set out in Appendix A, which is exempt from publication due to the commercial sensitivity of its content and is subject to further work to confirm future recommendations.
- 4.3 It is proposed that an informal cross-party working group may provide a sounding board for the emerging proposals, ahead of formal consideration by the Committee, as the Review progresses. The Working Group will be considering commercially sensitive information, so it would meet in private. It is not intended that reports or papers would be prepared specifically for the Working Group to consider, but that it will provide a sounding board for documents that are in development, ahead of their consideration by this Committee.

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 was originally anticipated that around £500k, less than 1% of the value of the contracts, would be required to carry out the Year 6/7 Review. This would be required for programme management, specialist input (including procurement and legal) and additional commercial capacity.
- 5.2.2 Project management 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 will, therefore, be additional resource implications associated with the extension to the overall timescales for delivery the Review. These are estimated to be approximately £240k for the financial year 2021/22.

- 5.2.3 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.

5.3 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. The existing contracts include Social Value provisions and the opportunity to enhance these will be considered as part of the negotiations to extend the contracts and in any re-procurement activity.

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 make 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:

- Ongoing time and/or resource constraints lead to the Review not being carried out effectively, resulting in poor decision-making
- Relationship with Capita deteriorates during the Review, 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 detailed planning.

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 on a service by service basis as detailed proposals are developed.

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. 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>

- 6.4. Report to Financial Performance and Contracts Committee, 27th October 2020:

<https://barnet.moderngov.co.uk/documents/s60807/Year%206-7%20Review%20FPC%20report.pdf>