

	<p style="text-align: center;">Financial Performance and Contracts Committee</p> <p style="text-align: center;">1 February 2022</p>
<p>Title</p>	<p>Review of Capita Contracts</p>
<p>Report of</p>	<p>Chief Executive</p>
<p>Wards</p>	<p>All</p>
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<p>Urgent</p>	<p>No</p>
<p>Key</p>	<p>No</p>
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<p>Summary</p>
<p>This report provides an update on the evaluation of Capita’s extension proposals. It also sets out the further work required to inform recommendations in respect of the future delivery of services that have been identified for potential contract extensions.</p>

Officer Recommendations

That the Financial Performance and Contracts Committee:

1. **Notes the current position in respect of the contract extension proposals, as set out in section 2 of this report;**
2. **Agrees that further work is required to inform recommendations on the future delivery of services; and**
3. **Notes the next stages of activity, as set out in section 4 of this report.**

1 WHY THIS REPORT IS NEEDED

1.1 At its meeting on 8th June 2021, the Financial Performance and Contracts Committee agreed the proposed direction of travel for services currently provided by Capita, through the Customer and Support Group (CSG) contract and the Regional Enterprise (RE) contract. The proposed direction of travel was based on 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.

1.2 Recommendations on the categorisation of services were 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

1.3 The report identified that there remained a considerable amount of work to be done before firm recommendations on the future delivery model for each service could be made.

1.4 The following table summarises the direction of travel that was agreed for each service:

Service	Retain	Return	Further review, with short extension
IT	✓		
Customer Services	✓		
Revenues and Benefits	✓*		
Procurement		✓	
Accounts Payable/Integra			✓
HR/Core HR			✓*
Estates			✓*
Planning and Development Control	✓*		
Building Control	✓		
Land Charges	✓		
Regulatory Services		✓	
Regeneration		✓	
Highways		✓	
Cemetery and Crematorium			✓

** with some element of the service potentially returning to the council upon expiry of the contract*

- 1.5 A progress report was considered by the Committee at its meeting on 7th October 2021.
- 1.6 At its meeting on 23rd November 2021, the Financial Performance and Contracts Committee agreed to make a number of recommendations to the Policy and Resources Committee. These recommendations were agreed by the Policy and Resources Committee on 9th December 2021, which also agreed that the report should be referred to Council. The following recommendations were agreed by Council on 25th January 2022:
1. That Council:
 - a) does not seek to extend those elements of the RE and CSG contracts that relate to the Procurement service, Regulatory

Services (Trading Standards, Licensing, Environmental Health), the regeneration service and highways;

- b) upon expiry of those elements of the contract, these services be returned to the Council;
 - c) the future strategy for the Highways service should be the subject of a separate report to the Environment Committee;
 - d) the Recruitment service be returned to the Council in February 2022; and
 - e) the Chief Executive be authorised to take the necessary action relating to any transfers, upon expiry of the contracts or sooner if deemed necessary, or actions associated with the services, subject to the conclusion of the necessary due diligence;
- 2. That Council notes the direction of travel for each service that was agreed previously as set out in section 1.8 of the report (Annex 2) including the services listed for further review, with short extension: Accounts Payable/Integra, HR/Core HR*, Estates* (*with some element of the service potentially returning to the Council upon expiry of the contract) and Cemetery and Crematorium;
 - 3. That Council notes the content of the Review of Capita Contracts Public Engagement report (Annex 3) and ORS Report (Appendix 3A); and
 - 4. That Council notes that the Policy and Resources Committee will consider any extension requirements that are required in respect of the Review of Integra and Core HR systems and supports that Review.
- 1.7 The purpose of this report is to provide an update on the evaluation of the proposals for “retained” and “further review” services.

2 REASONS FOR RECOMMENDATIONS

- 2.1 Capita’s extension proposals were received by the council at the end of October 2021. As reported to this Committee in November 2021, whilst this is not a procurement exercise in the usual sense, a rigorous evaluation process had been developed that is consistent with normal tender evaluation procedures. The process involved colleagues from the commercial and financial teams, as well as client leads, and was based on the criteria previously applied during the 2018/19 review of the contracts:

Strategic control	20%
Quality	35%
Value for money	35%
Social value	10%

- 2.2 In accordance with good practice, each officer involved evaluated the proposals independently and then a series of moderation panels were held, where individual views were discussed and an agreed score and commentary were recorded.

- 2.3 The evaluation process envisaged a two-stage approach, with feedback being provided to Capita following the first stage to enable modifications to provide a “best and final offer”. The council reserved the right to reject the proposals at any point.
- 2.4 As anticipated by the two-stage process, the initial proposals did not meet the council’s expectations to the extent that they could be considered to be acceptable. In particular, the proposals fell short of expectations in relation to the value for money criteria that had been set.
- 2.5 Detailed feedback on the evaluation outcomes was provided to Capita and they submitted a document titled “Update to Proposal for Extension of Services” on 17th December 2021. This Update acknowledged that further dialogue would be required, before a “best and final” offer could be formulated.
- 2.6 The Update has been evaluated using the same process as was applied to the initial proposals. In some areas, the Update has addressed evaluating officers’ feedback to the extent that the proposals are now considered to be acceptable. However, in other areas, whilst the Update has demonstrated some movement in the right direction, it has not fully addressed the feedback to the satisfaction of the evaluating officers, so has not yet reached the necessary threshold to be considered acceptable.
- 2.7 In respect of the value for money criteria, additional information was provided in the Update document to explain the financial aspects of the proposal, but no significant amendments were made to them. The financial and commercial elements of the proposal are complex, which also means that further work is required to fully understand the relationship between the proposals and the current budget envelope. As a result, it is not yet possible to confirm that the proposal meets the council’s expectations in respect of value for money.
- 2.8 It has, therefore, been concluded that officers are not yet in a position to make firm recommendations regarding the extension of the contracts and there will need to be further dialogue to reach that position.
- 2.9 Alongside the evaluation process, the council has received details from Capita of the current costs of providing these services. This information is essential to inform our assessment of the potential cost of bringing any services back in-house. At this stage, it is not possible to provide a definitive view of the cost of running services in-house, due to the complexities referenced above. Further information and clarification is being sought from Capita in order to fully understand the position.
- 2.10 Under the terms of the two contracts, the council is required to make a decision on any extensions and notify Capita of its intentions no later than 1st September 2022. Capita has indicated its willingness to continue to work with the council to resolve the concerns relating to the extension proposals and

ensure that the final proposals are acceptable to both parties. At this stage it is considered that such an agreement should be achievable.

- 2.11 Officers are also investigating the viability of further alternative options that could be affordable in the context of the current budget envelope, if agreement is not reached.

3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 As stated above, the council has reserved its right to reject the proposals at any point in the process. It is not proposed to exercise that right at this point, as further work is required to assess the viability of these proposals and any alternative options.

4 POST DECISION IMPLEMENTATION

- 4.1 Dialogue will continue with Capita with a view to shaping the proposals to ensure that they meet the needs of both parties.
- 4.2 Work will also be carried out to investigate and assess the viability of the alternative options for each service. This will include further work on understanding the likely cost and other implications of returning services in-house, as well as the potential for re-procuring services.
- 4.3 The outcomes of this work will be reported to the first meeting of the Financial Performance and Contracts Committee after the May elections.

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 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 were redeployed to support the delivery of critical services during the Covid-19 pandemic. There has, therefore, been additional resource implications associated with the extension to the overall timescales for delivery the Review. These are 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 is being considered as part of the negotiations to extend the contracts.

5.3.2 Social Value commitments contained in Capita's extension proposals are being evaluated independently of other parts of the submission.

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 Review should be reported to the Financial Performance and Contracts Committee. Any resulting recommendations would be made in further reports to the Policy and Resources Committee.

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

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 continue to be monitored and mitigating actions have been put in place, including establishment of close partnership working with Capita, ensuring appropriate resourcing (please refer to 5.2.1) and through detailed planning. The risk of further delays associated with Covid-19 is now considered to be minimal.

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 more detailed proposals are developed. For returning services, the development and consideration of Equalities Impact Assessments will be carried out as part of the exit planning process.

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 Review is a continuation of the review of Capita contracts and will take into account the feedback already provided. Further engagement has taken place through the use of focus groups, the outcome of which was reported to this Committee in October 2021.

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. Arrangements have been put in place to engage with and update staff, as the Review progresses.

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 are being 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>

- 6.5. Report to Financial Performance and Contracts Committee, 17th March 2021:

<https://barnet.moderngov.co.uk/documents/s64235/Yr%206-7%20Review%20FPC%20report.pdf>

- 6.6. Report to Financial Performance and Contracts Committee, 8th June 2021:

<https://barnet.moderngov.co.uk/documents/s65146/FPC%20Contracts%20Review%20Report.pdf>

- 6.7 Report to Council, 25th January 2022:

<https://barnet.moderngov.co.uk/documents/s69743/Referral%20from%20Policy%20Resources%20Committee%20Review%20of%20Capita%20Contracts.pdf>