

## Financial Performance and Contracts Committee

14 March 2022

<b>Title</b>	<b>Review of Capita Contracts</b>
<b>Report of</b>	Director, Commercial and Customer Services
<b>Wards</b>	All
<b>Status</b>	Public
<b>Urgent</b>	No
<b>Key</b>	No
<b>Enclosures</b>	None
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### Summary

This report provides an update on the progress of dialogue in respect of the contract extension proposals. It also sets out the high-level approach to preparing for the return of services upon contract expiry and provides a commentary on the cost of returning services.

### 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 paragraphs 2.1 to 2.4 of this report;
2. Notes that the Policy and Resources Committee on 9<sup>th</sup> February 2022 agreed a one-year extension of the contract as it relates to the provision of the current finance and HR systems;

3. Notes the high-level arrangements for returning services, as set out in paragraphs 2.6 to 2.10 of this report;
4. Notes the commentary on the cost of returning services, as set out in paragraphs 2.11 to 2.16 of this report; and
5. Notes the next stages of activity, as set out in section 4 of this report.

## 1 WHY THIS REPORT IS NEEDED

1.1 Following discussions at this Committee and Policy and Resources, the following recommendations were agreed by Council on 25<sup>th</sup> 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.

1.2 At its meeting on 1<sup>st</sup> February 2022, this Committee received an update on the evaluation of the proposals for “retained” and “further review” services. The conclusion of that update was that officers were not yet in a position to make firm recommendations regarding the extension of the contracts and there would need to be further dialogue to reach that position.

- 1.3 The update report went on to confirm that:
- a. Dialogue would continue with Capita with a view to shaping the proposals to ensure that they meet the needs of both parties;
  - b. Work would also be carried out to investigate and assess the viability of the alternative options for each service. This would 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; and
  - c. The outcomes of this work would be reported to the first meeting of the Financial Performance and Contracts Committee after the May elections.
- 1.4 The purpose of this report is to provide a further update on progress and to set out a high-level approach to the returning services. The report also contains a commentary on the cost of returning services.

## **2 REASONS FOR RECOMMENDATIONS**

### **Retained and further review services**

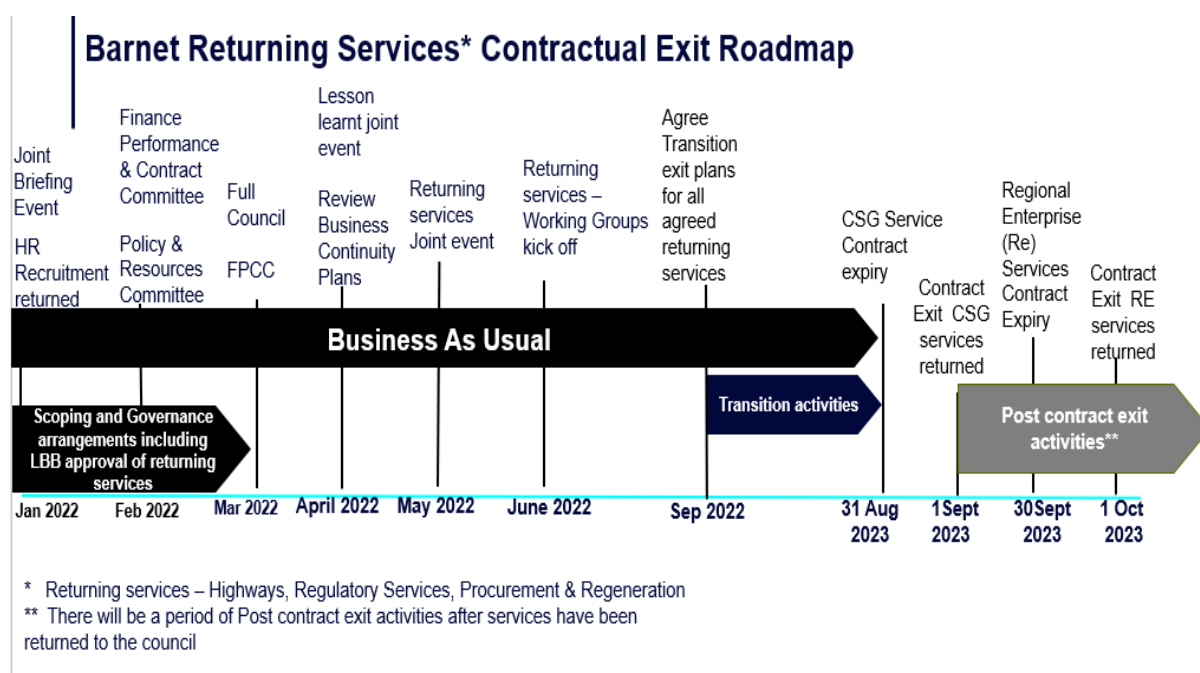
- 2.1 Dialogue between the parties has progressed in a constructive and positive manner. Much of the focus to date has been on understanding and addressing the value for money concerns, which were referenced in the previous update report. In respect of the services provided through the CSG contract, the perceived budget gap between the current cost of the contract and the extension proposal has closed considerably. and is nearing a point where officers will be in a position to make firm recommendations to the next meeting of this Committee.
- 2.2 The position of the finances on the RE contract is more complex, due to the Income Guarantee. This Guarantee has never worked as originally anticipated, as Capita over-estimated the income that could be derived from the Highways Service. Although the Planning Service has significantly out-performed expectations, this has not been sufficient to offset the shortfall of income in Highways. As a result, the council has benefited significantly from the Guarantee over the last eight years. However, as Council has now agreed to bring the Highways Service back in-house, this underperformance will no longer occur. The remaining service is predominantly Planning and Building Control, where the level of income that can be achieved is primarily demand-driven, as the volume of service is dependent on the level of development within the borough, rather than any activities that Capita can influence. This means that the Income Guarantee is no longer a relevant mechanism to the council. The council and Capita are therefore exploring alternative contractual mechanisms that provide a fair and realistic balance of risk and reward, along with appropriate incentivisation for the provider to maximise the level of income received by the council.
- 2.3 Whilst the main focus since the last update report has been on the value for money considerations, some progress has also been made on addressing client leads' feedback in respect of the service proposals. This, along with

firming up the Social Value proposals, will become the main focus of dialogue, once the financial position has been finalised.

- 2.4 At its meeting on 9<sup>th</sup> February 2022, the Policy and Resources Committee considered a report on the commencement of procurement for the replacement of the council's finance and HR systems. Members of the Financial Performance and Contracts Committee are asked to note that the Policy and Resources Committee agreed a one-year extension of the CSG contract as it relates to the provision of the current systems (Integra and CoreHR) to facilitate that procurement.
- 2.5 Alongside the dialogue on Capita's extension proposals, work has also been progressing on interrogating and clarifying the information received from Capita on the current costs of providing these services. This will inform the recommendations that officers make to the Committee in due course. Preparatory work has also been done to consider the viability of further alternative options, which could be pursued in the event that an appropriate agreement is not reached.

### Returning services

- 2.6 The council and Capita programme teams have worked together to agree a returning service road map (see below), highlighting key activities and milestones over the next 18 months for services returning to the council.



- 2.7 Detailed planning will continue over the next six months, with a view to having agreed, detailed plans in place by September 2022. These will cover a range of matters including:

- Transfer of staff (in accordance with TUPE regulations)
- Setting up new IT arrangements

- Novation of service and supply contracts
- Transfer of service-related data

- 2.8 Communication with staff throughout the process will be critical. Briefing events to date have covered all staff employed on the CSG and RE contracts. There will be a jointly-run briefing event specifically for those staff employed in returning services in May 2022. This will be followed by regular briefing sessions, as the detailed plans are finalised and work on the actual transition activities progresses.
- 2.9 Governance arrangements for the programme have been reviewed to ensure there are robust arrangements in place to aid a smooth transition of services back to the council. A returning services project board will be established to oversee all transition activities and exit planning deliverables. These will be delivered through both service-specific and cross-cutting workstreams, drawing on input from the council's HR, Finance, Commercial, IT, Legal and Communication teams, supported by a dedicated returning services programme team.
- 2.10 Service transition plans will be jointly agreed by the council and Capita and will provide a consistent, auditable process with partnership working integral at all stages. Capita are committed to continue to work collaboratively with the council to ensure that there is a smooth transition of services. They will also be working closely with the council to maintain the business-as-usual operations of these services over the remaining life of the contract.

### **Cost of returning services**

- 2.11 At the last meeting of the Financial Performance and Contracts Committee, the Chairman asked officers to give further consideration to the early publication of the financial information on returning services that had been considered by the Committee at its meeting on 23<sup>rd</sup> November 2021 as exempt information. Officers have duly considered the request and confirmed their view that publication of this information prior to the conclusion of negotiations in respect of the contract extensions would compromise the council's negotiating position and this consideration outweighs the public interest in disclosing the information at this stage.
- 2.12 The conclusion presented to that meeting of the Committee was that, across the four services, the financial impact of returning them to the council would be affordable and, overall, would not result in additional costs to the council in delivering those services. That conclusion was based on an assessment of the difference between the current contract price paid to Capita and the anticipated cost to Barnet of running the services, together with an assessment of the impact of guaranteed income on those services.
- 2.13 As with previous transfers, that comparison is based on services transferring on a "like for like" basis. Once services have transferred back to the council, it will be for council officers to manage the delivery of those services within the allocated budget envelope.

- 2.14 The initial services that were transferred back to the council (Strategic Finance and HR) were transferred recognising that significant changes would be required to the way those services were run in order to address concerns about the quality and capacity of strategic support in those key functions.
- 2.15 The financial analysis carried out prior to the transfer of these functions in 2019 suggested that the council would incur additional running costs of approximately £400k in 2019/20, rising to c.£570k in 2022/23, across the two services, primarily as a result of increased pension costs. This analysis was based on a “like for like” transfer, but with a recognition that any increases in staffing numbers would also create additional cost.
- 2.16 Since that transfer, both services have been restructured to address those pre-transfer concerns around the quality and capacity of strategic support. The changes in staffing numbers and service budget are set out in the following table:

	<b>Finance</b>	<b>HR</b>
Headcount pre-transfer (2018/19)	59	13
Current headcount post-transfer (2021/22)	80	19
Increase	21	6
Budget pre-transfer (2018/19) including pay & other inflation indexed to current financial year	£3,796k	£1,082k
Current budget (2021/22)	£4,059k	£1,273k
Increase	£263k (7%)	£191k (18%)

- 2.17 This shows that the actual increase in the cost of running these services has been quite significant. These changes, which were made to address known concerns about quality and capacity, were the subject of appropriate decision-making and additional budget allocations at the time.
- 2.18 Although cost increases did occur with these services, the financial analysis of the services due to be returned next year suggests that they will be cost-neutral at worst.

### **3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 Not relevant, as this report provides an update on progress.

## **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 continue to investigate and assess the viability of alternative options for each service, in the event that a suitable agreement is not secured. 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. The Committee's terms of reference includes '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 17<sup>th</sup> 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 17<sup>th</sup> 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.

## **5.10 Environmental Impact**

- 5.10.1 There are no direct environmental implications from noting the recommendations. Implementing the recommendations in the report will lead to a positive impact on the Council's carbon and ecology impact, or at least it is neutral.

# **6. BACKGROUND PAPERS**

- 6.1. Report to Financial Performance and Contracts Committee, 1<sup>st</sup> February 2022:  
[HTTPS://BARNET.MODERNGOV.CO.UK/DOCUMENTS/B38006/ITEM%207%20-%20REVIEW%20OF%20CAPITA%20CONTRACTS%2001ST-FEB-2022%2019.00%20FINANCIAL%20PERFORMANCE%20AND%20CONTRACTS%20COMMIT.PDF?T=9](https://barnet.moderngov.co.uk/documents/B38006/ITEM%207%20-%20REVIEW%20OF%20CAPITA%20CONTRACTS%2001ST-FEB-2022%2019.00%20FINANCIAL%20PERFORMANCE%20AND%20CONTRACTS%20COMMIT.PDF?T=9)
- 6.2. Report to Financial Performance and Contracts Committee, 29<sup>th</sup> January 2020:  
<https://barnet.moderngov.co.uk/documents/s57531/Year%206%20and%20Y7%20review%20ToR.pdf>
- 6.3. Report to Financial Performance and Contracts Committee, 18<sup>th</sup> March 2020:  
<https://barnet.moderngov.co.uk/documents/s58379/Year%2067%20Review%20of%20Capita%20Contracts.pdf>
- 6.4. Report to Financial Performance and Contracts Committee, 15<sup>th</sup> June 2020:  
<https://barnet.moderngov.co.uk/documents/s58926/Yr%206-7%20Review%20FPC%20report.pdf>
- 6.5. Report to Financial Performance and Contracts Committee, 27<sup>th</sup> October 2020:

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

- 6.6. Report to Financial Performance and Contracts Committee, 17<sup>th</sup> March 2021:  
<https://barnet.moderngov.co.uk/documents/s64235/Yr%206-7%20Review%20FPC%20report.pdf>
- 6.7. Report to Financial Performance and Contracts Committee, 8<sup>th</sup> June 2021:  
<https://barnet.moderngov.co.uk/documents/s65146/FPC%20Contracts%20Review%20Report.pdf>
- 6.7. Report to Council, 25<sup>th</sup> January 2022:  
[https://barnet.moderngov.co.uk/documents/s69743/Referral%20from%20Policy%20Resources%20Committee%20Review%20of%20Capital%20Contracts.p  
df](https://barnet.moderngov.co.uk/documents/s69743/Referral%20from%20Policy%20Resources%20Committee%20Review%20of%20Capital%20Contracts.pdf)