

BIRMINGHAM CITY COUNCIL
PUBLIC REPORT

Report to: **CABINET**

*Exempt
information
paragraph
number – if
private report:*

Report of: **Chief Operating Officer**
Date of Decision: **14 November 2017**
SUBJECT: **Budget savings proposals, ending the Joint Venture (JV) with Capita for Service Birmingham and proposing new contractual arrangements up to 2020 / 2021**
Key Decision: **Yes** **Relevant Forward Plan Ref:**
Public: 004301/2017

If not in the Forward Plan: **Chief Executive approved** ☐
(please "X" box) **O&S Chair approved** ☐
Relevant Cabinet Member(s) or **Councillor Jones – Deputy Leader**
Relevant Executive Member: **Councillor Mahmood - Cabinet Member for Value for Money and Efficiency**
Relevant O&S Chair: **Councillor Councillor Mohammed Aikhlaq – Chair of Corporate Resources and Governance Overview and Scrutiny Committee**
Wards affected: **All**

1. Purpose of report:

- 1.1 To advise Cabinet of the outcome of negotiations with Capita to deliver the budgeted savings for 2017/8 and up to 2020/21 under the Service Delivery Agreement (SDA) for ICT services with Service Birmingham Limited (SB).
- 1.2 To advise Cabinet as to how the Joint Venture arrangement (JV) with Capita for Service Birmingham Ltd will be ended and propose the new contractual arrangements that will be put in place.
- 1.3 To advise Cabinet of the findings from the due diligence work conducted since the submission of a report approved by Cabinet on 27 June 2017
- 1.4 The accompanying private report contains commercially confidential information.

2. Decision(s) recommended:

That Cabinet:

- 2.1 That Cabinet notes the report.

Lead Contact Officer(s): Peter Bishop, Chief Information Officer and Assistant Director for Information, Technology and Digital Services, Strategic Services
Telephone No: 07864 926819
E-mail address: peter.bishop@birmingham.gov.uk
Lead Contact Officer(s): Nigel Kletz, Director of Commissioning & Procurement
Corporate Procurement Services, Strategic Services
Telephone No: 0121 3093 6610
E-mail address: nigel.kletz@birmingham.gov.uk

3. Consultation

3.1 Internal

Senior officers in Finance, Legal, HR and Procurement have been involved in detailed negotiations with Capita and Trade Union engagement in the preparation of this report..

The Cabinet Member for Value for Money, the Chair of Corporate Resources Overview and Scrutiny Committee, the Deputy Leader of the Conservative Party, the member with responsibility for ICT matters from the Liberal Democratic Party and the Council Directors of Service Birmingham have been consulted regarding the contents of this report and support it progressing to an executive decision.

Service Birmingham has undertaken informal and formal communication with the council staff that are seconded to the service.

3.2 External

PWC were appointed to review and provide external financial advice to the council on the negotiations with Capita on ending the Joint Venture and 2017/18 savings proposals.

Gowling WLG are externally appointed legal advisors who have reviewed the current SB contract and its various schedules in support of the development of the various negotiation options and have advised on the process, issues and risks around ending the JV contract.

Socitm Advisory has provided commercial negotiation support, technology and services advice and guidance, programme management and assisted with the financial support.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

The Council's objectives and priorities as detailed in the Vision and Forward Plan approved by Cabinet on the 16 May 2017 will be supported by the adoption of this proposal which is consistent with the ICT & Digital Strategy (2016 - 2021) approved by Cabinet in October 2016.

4.2 Financial Implications (How will decisions be carried out within existing finances and Resources?)

The negotiated offer has been reviewed and compared to the current savings within the Council's Long Term Financial Plan (LTFP).

Table 1 - ICT & Digital Savings – LTFP 2017 - 2021

Description	2017/18 £m	2018/19 £m	2019/20 £m	2020/21 £m	Total £m
ICT savings in FP 2017+	10.020	9.650	11.770	11.770	43.210
Add: Budgeted charity profit share – to be made up by the Council	1.100	1.100	1.100	1.100	4.400
Revised total after adjustment for profit share	11.120	10.750	12.870	12.870	47.610

Less: Payment for Council stake in SB and 2017 distributed profit share	-11.500				-11.500
Saving still to be achieved	-0.380	10.750	12.870	12.870	36.110

The proposed sale of the Council's stake in SB is tied in with agreement on an approach to delivering the further savings required within Financial Plan 2017+. This approach includes:

- a. principles which will underpin transition of services from SB to the Council over the next three years;
- b. a roadmap which sets out the proposed phasing of transition;
- c. a governance structure for overseeing the process of transition and the delivery of savings
- d. indicative savings from the transition.

Work carried out so far has identified indicative savings that will bridge the budget gap up to 2020/21; however, there remains a gap of £1m in 2018/19. Further work is needed to validate the savings, find measures to address the gap in 2018/19, and put in place a programme to deliver the savings.

Indicative costs of technology projects required to deliver the savings are in line with amounts approved by Cabinet in October 2016 for the Technical Refresh and Investment Programme (TRIP). However, a number of the projects involve delivery of new cloud based solutions instead of installation of computer hardware which will alter the balance in the TRIP between capital and revenue and the funding implications of this will have to be reviewed as the programme develops.

There will be two further cost pressures for which funding will need to be identified:

- a. Staff transition/exit costs (redundancy and Pension Fund Strain)
- b. Costs that the Information, Technology and Digital Services team would incur to ensure smooth transition of services from SB and delivery of the service and financial benefits expected.

Officers will be continuing to refine the savings and cost figures in advance of budget setting in February 2018 with a view to ensuring there are robust plans to deliver the savings, the gap in 2018/19 is addressed, and the funding implications of a change in balance between capital and revenue projects in the TRIP programme are understood and addressed.

4.3 Legal Implications

The Council are under a duty under Section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. The implementation of the Savings Plan will deliver economy. The ending of the Joint Venture will be implemented on the basis that it demonstrates best value to the council for the remaining term of the SDA.

Under Regulation 72, Public Contract Regulations 2015, contracting authorities are permitted to procure contracts where the modifications, irrespective of their value, are not substantial. Whilst there are risks in any change to contract terms post completion, it is considered that the risks of

implementing changes to the SDA to deliver the Savings Plan and to end the Joint Venture, will not materially change the economic balance of the contract and therefore are considered to be low.

4.4 Public Sector Equality Duty

In October 2016 Birmingham City Council Cabinet approved the ICT & Digital Strategy for the period 2016 -2021. The work to implement the strategy has two major projects:

1. An Investment Programme - implementing replacement and new, enabling ICT assets in line with the strategy and in support of the Council's new Business Architecture.
2. An ICT Transition Programme to take BCC up to and beyond the end of the Service Birmingham partnership with Capita and the ending of the Joint Venture with Service Birmingham.

An Equality Analysis was completed during the development of the ICT & Digital Strategy (2016-2021 and for the Cabinet report of the 27th June (see Appendix 1). There has been no change to that analysis.

5. Relevant background / chronology of key events:

- 5.1 The Council's contract with Capita for ICT services from Service Birmingham commenced in 2006 for a ten year period with an option to extend for a maximum of a further five years. This extension was exercised in 2011 as the 4th Deed of Variation.
- 5.2 In March 2014 the Council agreed a series of savings for the remaining seven years of the contract to the total value of £140m. These savings have been achieved or plans are already in place to deliver the savings over the life of the contract.
- 5.3 In October 2016 Cabinet approved the Information & Communications Technology & Digital Strategy (2016 - 2021) to guide the prudent use, maintenance and development of the Councils ICT assets to and beyond the end of the existing Service Birmingham contract in 2021. The strategy described the need for investment and to transition to a new ICT Operating Model to enable the Council to deliver the savings associated with the service between 2017 and 2021. In January 2017 the Council formed the "SB Transition Programme" and initiated contract negotiations with Capita, with key objectives to:
 - Save £10.02M revenue from the Core ICT Contract cost in 2017-2018 and deliver revenue savings totalling £43M in total across 4 years as set out in the Financial Plan 2017+
 - Reach a negotiated position with Service Birmingham that;
 - Allows the Council moving forward to gradually take back full control of its ICT & Digital from Capita/Service Birmingham.
 - Allows the Council to deliver the ICT & Digital projects in a manner that represents value for money and meets the needs of the Directorates and the wider Council.
 - Gives the Council flexibility to deliver an ICT & Digital Service and future Operating Model that can flex as the wider Council transforms.
 - Gives the Council the right to go to the market as it selects solutions or implements new capability to test that it always getting real value for money.
 - Potentially allows the Council to select multiple suppliers, and in doing so avoid penalty

charges.

- Avoids extending the current contract for any further additional years.
- 5.4 A joint team between Capita, Service Birmingham and the Council under the leadership of the Chief Operating Officer were tasked to work together to agree how these savings could be delivered in a manner consistent with the ICT&D Strategy. The Council sought technical support through procured arrangements with Socitm Advisory and legal support through Gowling WLG.
- 5.5 In April 2017 substantive agreement was achieved between the Council, Capita and SB on how to deliver the savings, which was confirmed in a Without Prejudice Letter from Capita dated 2nd May 2017 and attached to the June Private report. Since 27 June 2017 to October 2017, negotiations to translate the Without Prejudice Letter of Intent into a formal contractual Agreement have concluded.
- 5.6 Capita and the Council have also agreed principles for working together to deliver savings required in the LTFP over the remaining term of the contract. There remains a risk that these principles will not be agreed but Officers and Capita are working in partnership to see a way through these risks so that Council can achieve its objectives. An implementation plan was prepared to deliver the actions required following approval of the June Cabinet report which included:
- 5.6.1 Detailed legal, HR and financial due diligence of the offer leading to a new set of contractual arrangements has taken place. The contractual changes are:
- Ending the and amending the Joint Venture Agreement to become an Overarching Agreement to ensure any rights enshrined within the above are not lost to the Council (the revised contract structure is shown in Appendix 9)
 - Deed of Variation 10 to the Service Delivery Agreement.
 - Agreement to a series of Transaction Documents covering:
 - Share Purchase Agreement
 - Termination Deed
 - Charitable Donation Letter
 - New contractual governance arrangements which simplifies how the Council will oversee the performance of the service delivered by SB
- 5.6.2 Assessing any employment issues and impact on staff through Trade Union and staff consultation. No change is planned immediately but as the services are changed consultation will be carried out in the normal way.
- 5.6.3 External communication for the Council, Capita and supporting partners.
- 5.6.4 Establishment of new Terms of Reference for the SB Transition Programme to implement the desired changes and mobilise the necessary programme structure, project governance and required resources.
- 5.7 A revised governance framework was approved by Cabinet in June 2017 and this has been implemented to maintain oversight to ensure:
- Strategic Alignment: Linking the Council and ICT & Digital services so they work together.
 - Maintaining Control: Identifying business requirements correctly, choosing the right ICT solution, reusing what we have and working against a roadmap towards a future design.
 - Value Delivery: Making sure that that the Council's ICT& Digital service delivers the benefits promised at the beginning of a project or investment.
 - Resource Management: Manage resources more effectively, deploying resources on a

demand driven basis.

- Risk Management: Instituting a formal risk framework that manages and reports risk
- Performance Measures: Measuring business performance against achieving business goals.

5.9 The proposed future ICT& Digital service is based around a multi supplier Service Integration and Management (SIAM) model which will be progressively implemented over the next three years. The shape and objectives of the Council are changing and the ICT& Digital service needs to support and lead in achieving those objectives, whilst providing flexibility, added value and having the ability to continue delivering a 'day-to-day' Information, Technology & Digital service whilst making this transition. The Service Birmingham Transition programme will be a major undertaking for the Council. It will be the biggest transition of ICT services in the Local Government Sector and will present a significant risk to the Council, both in terms of the changes in operational services, the achievement of a step change to improve how the council uses Technology and deliver the savings, if it is not appropriately supported.

5.10 Each major project or service migration will be covered via a business case. Other costs such as termination costs of third party contracts or redundancy/pension strain costs will be considered by the Council via the ICT&D governance to ensure robustness in planning, financial support and execution.

6. Evaluation of alternative options:

Refer to Private Report.

7. Reasons for Decision(s):

To authorise officers to proceed with ending of the Joint Venture arrangement, the delivery of a Deed of Variation to the Service Delivery Agreement (SDA) and continue to deliver the ICT savings for 2017/18 – 2020/ 2021.

Signatures

Date

Councillor Brigid Jones
Deputy Leader

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Angela Probert
Chief Operating Officer , Strategic Services

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Councillor Majid Mahmood
Cabinet Member for Value for Money and
Efficiency

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List of Background Documents used to compile this Report:

1. Birmingham City Council Information & Communications Technology & Digital Strategy (2016 - 2021)
2. Birmingham City Council Strategic ICT & Digital Investment Programme (2016 - 2021)
3. Report to Cabinet of 27 June 2017 Delivery of Savings against Service Birmingham ICT Contract

List of Appendices accompanying this Report:

1. Equality Impact Analysis

Report Version

Dated

PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in section 4.4 of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty (as an appendix).

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

- 1 The Council 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 the Equality 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.
- 2 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.
- 3 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.
- 4 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 The relevant protected characteristics are:
 - (a) marriage & civil partnership
 - (b) Age
 - (c) disability
 - (d) gender reassignment
 - (e) pregnancy and maternity
 - (f) Race
 - (g) religion or belief
 - (h) Sex
 - (i) sexual orientation