



Commercialising Education and Skills

Future Delivery of Services to Schools

London Borough of Barnet



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Executive summary

Commercial values and market ideology are used to reject the in-house option for the Education and Skills services. The Committee Report and the Draft Outline Business Case make a series of assumptions but provide no evidence to underpin them. Nor do they provide evidence that a commercial strategy will be able to meet the needs of schools and pupils in Barnet. The Options Appraisal has many serious shortcomings:

- There is high probability that the sector will perceive that Capita's two large contracts with Barnet Council give it an unfair advantage. Private contractors may initially express an interest in the contract, but may refrain from bidding and incurring transaction costs. It could mean the Council fails to obtain value for money and Capita charging premium contract rates.
- Performance and quality of service accounts for only 20% (it should be at least **40%**) of the options appraisal and the weighting and scoring of the in-house option is not credible. There is also evidence of bias in the selection, scoring and weighting of criteria.
- When the recommended changes in the category weighting, the elimination of inappropriate criteria, the inclusion of commercial risks coupled with a realistic reassessment of scores are taken into account, the in-house option has a similar score to the school-led social enterprise and the two JVC options.
- The **£800,000** estimated cost of this project should be used to reduce the impact of spending cuts on education and skills services and increase capability to generate income.
- **No evidence** is provided that private sector investment in education and skills services in Barnet will be sufficient and timely to replace lost income from public spending cuts.
- The initial views from the consultation with schools indicate that only the outsourcing option has little support. It is therefore both premature and inaccurate to present the options as "three backmarkers" (LATC, in-house and outsourcing options) and "three front-runners" (social enterprise and both JVC options). JVCs are also outsourcing.
- Barnet Council's commercial strategy has significant risks that are not reflected in the Draft Outline Business case (see page 9). The risks that are identified are inconsistent and in some cases include 'statements of fact' rather than risks.
- Employment change and risk is not addressed in the outsourcing, schools-led company/social enterprise and the two JVC options with a private contractor, which is totally unrealistic.
- Although the Council's 'testing the market' reported some private contractors suggested additional services, such as early years and libraries, be included in the options appraisal. If services are not included in the options appraisal they should not be added at a later date.

Recommendations

1. Barnet UNISON recommends a fully resourced innovative in-house option be included alongside further development of the schools-led social enterprise option. The two joint venture options should be rejected together with the outsourcing and LATC options.
2. School catering is a highly successful income generating service serving 90% of schools in Barnet, in which **all surpluses directly benefits schools**. It should be excluded from the scope of the project.
3. If the Committee recommends continuing the JVC options, then **Capita should be approached and asked not to bid** for the education and skills contract.
4. Before the Committee make any decisions the Performance and quality category weighting should be increased from 20% to **40%** with a 10% reduction in the category weightings for Strategic Direction and Cost Saving.

The future delivery of services

Barnet Council is proposing to select a new service provider for Education and Skills services – either a Schools-led social enterprise, a joint venture with schools having a commissioning role or a joint venture with schools having an ownership role. These options will be further developed and assessed over the next three months.

It is planning to reject the in-house, outsourcing and a Local Authority Trading Company (LATC) options.

The services in scope are summarised below:

Education and Skills services in scope	
<p>School improvement</p> <ul style="list-style-type: none"> • Statutory LA duties to monitor, support and challenge schools • Narrow the gap service (DSG funded) <p>Special educational needs (subject to changes being implemented by the Children and Families Act 2014 from 1st September 2014)</p> <ul style="list-style-type: none"> • SEN placements & performance team • SEN Early Support Programme • Speech & Language therapy • SEN Transport – commissioning and assessment • Educational psychology team (part traded) • SEN placements (DSG funded) • SEN specialist support service 	<p>Admissions and sufficiency of school places</p> <ul style="list-style-type: none"> • Pupil place planning • Admissions Service (DSG funded) <p>Vulnerable pupils</p> <ul style="list-style-type: none"> • Education welfare service <p>Post 16 learning</p> <ul style="list-style-type: none"> • 14-19 service to ensure sufficiency and breadth of supply • Monitoring, tracking and supporting participation <p>Traded services within Education and Skills</p> <ul style="list-style-type: none"> • Catering service • Governor clerking service • School improvement traded service • Newly Qualified Teachers • Educational psychology (part) • Education Welfare Service (part)

(Source: Draft Outline Business Case)

Commercialisation of education

The Council’s strategy relies on a market model in which private contractors (or a JVC with the Council/schools) will generate additional income in Barnet and win new contracts in other local authorities, which will replace education and skills budget reductions in Barnet.

This approach rests on two commercial ideas – **income generation** and **winning substantial contracts for additional services** in other local authorities.

Firstly, it relies on **increasing trade** to current school ‘customers’, schools in Barnet that are not currently receiving services and to trade with schools in other local authorities in and outside London and the academy chains (for and non-profit).

Secondly, it relies on **building income through delivering higher volumes of existing services, the development of new services** “...and bringing them to market is a further mechanism for growing revenue” (para. 1.37, Committee Report).

A commercial approach has numerous risks and challenges that are ignored in the options appraisal and Committee Report:

1. Increased income from trading is dependent on winning additional contracts, but the track record is poor in strategic partnerships and outsourcing. But other local authorities are in exactly the same position. Even if a private contractor wins an additional contract it will have to deliver education and skills services under the same or very similar conditions as in Barnet.
2. Additional revenue only has a benefit for Barnet schools and the Council if those contracts create a surplus/profit and/or significant economies of scale are achieved. Other local authorities face similar spending cuts and demand for education services. Achieving a scale of surplus/profit on these services that will benefit Barnet will be very difficult under these conditions. Furthermore, private contractors will prioritise their own profit targets.

Barnet's approach makes a crude assumption that the spending cuts in Education and Skills can be ameliorated by an aggressive commercial trading strategy.

This approach could involve the transfer the Education and Skills services to a social enterprise or a Joint Venture Company, possibly with schools, between the Council and a private contractor, most likely Capita, and provide them with a London base from which they will try to win similar contracts from other local authorities in London and the south east. There may be an assumption that it will draw on resources from Capita's education contract '**Entrust**' with Staffordshire County Council.

Funding and investment

*"It is assumed that through **the application of commercial acumen and quicker availability of funding**, a third party provider would be more likely to be able to develop services quickly in response to emerging needs"* - our emphasis (para. 1.37, Committee Report).

In addition to major questions concerning the source of commercial funding, there are equally important questions about the source of private sector investment and the availability of other funding for education and skills services in Barnet and local government in general.

Firstly, an innovative in-house service can be successful in increasing income generation and providing innovative new services to meet new and/or changing demands from schools.

Secondly, the in-house and LATC options cannot secure additional private funding and it is highly unlikely that the outsourcing option will be able to secure grant funding (pages 12, 13 and 15, Draft OBC). The schools-led social enterprise option will be *"harder to leverage external investment"* (page 16), the Draft OBC is silent on this matter for the JVC (Council and contractor), whilst the JVC (Council, schools and contractor) claims it will have the ability *"...to secure a third party provider willing to provide an appropriate level of investment, given the involvement of two further parties"* (page 18).

The **new funding arrangements** for Special Educational Needs include Personal Budgets for young people and parents of pupils with a education, health and care plan. The potential impact of the shift from **block contracts to personal budgets** on revenue streams must be taken into account.

Finally, securing a private contractor with the ability to provide an appropriate level of investment is only the start and further questions arise:

- What is the purpose of the investment and does it align with Barnet's education and skills needs?
- Will the level of investment fill the void caused by public spending cuts?
- What are the conditions imposed by the contractor?
- What rate of return is sought by the contractor?

Only 8% of the School Survey regarded the ability to attract external investment as most important for deciding on the best model, the lowest ranking in eleven criteria (Appendix A, Committee Report).

Quality of services to schools

The quality of Barnet's education and skills services appears to have been relegated in the commercial strategy to sustain the current budget through income generation and growth.

"Without additional investment from the Council and/or increased income, non-DSG funded services would be reduced to a statutory minimum" with a potential impact on services to schools and on children and young people (pages 15 and 16, Draft OBC).

The Committee report therefore concludes the *"...in-house model cannot therefore meet all the objectives for this service, as the level of service cannot be preserved"* – our emphasis (para. 1.15, Committee Report).

But given the level of spending cuts imposed by the Coalition government, it would be a grave mistake to believe that any option could ensure they will be able to maintain the current level of education and skills services.

Assessment of options

“The in-house option is the representation of the service continuing to operate broadly as now, but on the basis that budgets are to be reduced significantly” (para 1.15, Committee Report).

There is no evidence that the options appraisal assessed how spending cuts would impact on the organisation and delivery of education and skills services. All options would be confronted with this scenario if they did not succeed in winning contracts and achieving profits and/or significant economics of scale.

The In-house option is rejected primarily because:

“This option would require significant changes in organisational capacity and skill-sets to deliver a more commercial approach. The impact of budget reductions on capacity would restrict the ability to achieve this” (para.1.15, Committee Report).

The Committee Report cites three key assumptions that underpin the assessment of options:

- Models that include schools in ownership or commissioning roles are a better strategic fit.
- Models that include a third party provider attain greater commercial expertise from the outset and are better able to grow services more quickly.
- Models that include a third party provider deliver a greater opportunity for investment from outside the current system.

Commercial values and market ideology are used to reject the in-house option. The Committee Report and the Draft Outline Business Case provide no evidence to underpin these assumptions. Nor do they provide evidence that a commercial strategy will be able to meet the needs of schools and pupils in Barnet.

It is vital that elected members, schools and staff are provided with financial information and facts to support the statements in the options appraisal.

Evaluation criteria, scoring and weighting

The Evaluation Criteria (Appendix B) and scoring and weighting (Appendix C) have many serious flaws:

- Performance/quality is allocated only 20% of category weighting when it should be at **least 40%**.
- Weighting and scoring of the in-house option is not credible resulting in the two JVC options scoring 84% and 85% compared to only 35% for the in-house option.
- The assessment of options in the Draft Outline Business Case is primarily based on broad statements and value judgements reflecting the commercial and market driven approach adopted from the outset.
- Governance and hence democratic accountability and transparency is deconstructed to *“...simplicity of the governance structure....to act decisively and strategically.”*

There is evidence of bias in the selection, scoring and weighting of criteria, for example in the cost saving and performance sections:

Cost saving

‘Ability to attract external investment’ – the scoring does not take account of the commercial realities and risks.

‘Ability to guarantee budget targets’ – the assumption that the outsourcing and joint venture options are five times more likely to guarantee budget targets than the in-house option is not credible.

'Ability to sustain a coherent service offer over the long-term' – again the scoring is not credible.

'Ability to access further funding streams' - Since this is likely to be primarily grant funding, the award of zero points to the in-house option and higher points to other options is unjustified.

Performance

'Capability and capacity to develop or adapt services flexibly to meet changing needs' – in-house services have the same capacity to respond to changes in demand. The assumption that outsourcing/JVC options have maximum scores does not reflect reality, particularly when changes may mean a loss of income to contractors.

'Freedom to innovate' – the organisational culture, freedom of staff to identify and implement innovative approaches has been achieved in some local authorities. Failure to do so is a management failure.

'Delivery and Performance risks are shared' – this is invalid because it does not take into account that outsourcing/JVCs increase risk for the Council. They have high scores whilst the in-house and LATC options score zero.

When the recommended changes in the category weighting, the elimination of inappropriate criteria noted above, the inclusion of commercial risks coupled with a realistic reassessment of scores are taken into account, **the in-house option has a similar score** to the school-led social enterprise and two JVC options.

Consultation with schools

The initial views from the consultation with schools indicate that only the outsourcing option has little support with only 23% either positive (7%) or willing to consider (16%) this option. Their initial views on other options ranged from 51% to 72%. **Both JVC options are outsourcing.**

The Committee Report refers to a high level of engagement by schools in the consultation. However, *"...the proportion of respondents that chose not to express views on the options, along with the number of respondents that selected the "don't know/not sure" response, reinforces the messages from meetings and from individual schools that schools require more time and more information on which to base any decisions they would need to make"* (para. 1.29, Committee Report).

It is therefore both premature and inaccurate to present the options as "three backmarkers" (LATC, in-house and outsourcing options) and "three front-runners" (social enterprise and both JVC options) at the end of the Appendix A on the Headline Consultation Findings.

In addition, the Council **must indicate the number of each category of schools** that have been involved in the consultation process. Barnet has over **120 schools** and their engagement in the options appraisal is important for two reasons.

Firstly, it is crucial that all schools understand the impact of all the options and they are engaged in supporting the development of education and skills services.

Secondly, all schools must be fully committed to a schools-led social enterprise for this option to be viable.

Risk management

Barnet Council's commercial strategy has significant risks that are not reflected in the Draft Outline Business case (page 35). The Table contains only six risks. Four refer to school buy-in to the chosen model, procurement, timescale and possible changes in SEN legislation.

A fifth refers to the *"... risk that none of the models will deliver the required financial benefits, due to the range of services within scope (and those that are not in scope) and/or the ability to grow services due to the current high level of buy-back for those services."* The sixth concerns Capita's involvement (see below).

The commercial risks omitted include:

- The scale of additional contracts in Barnet and other local authorities is less than expected with considerably reduced income generation.
- That trading will generate sufficient surplus/profits and/or economies of scale that will benefit Barnet's education and skills service provision.
- The reliance on winning and delivering similar contracts in other local authorities could lead to a private contractor having to reduce its focus on Barnet's education and skills services.
- There is a significant risk that the quality of education and skills services in Barnet will not be maintained due the spending cuts and/or failure of commercial trading to replace the budget reduction.
- Disputes in a Joint Venture model could lead to increased costs and ultimately breakdown of relationships as experienced in some local authority strategic partnership contracts.
- Job losses and/or reductions in terms and conditions could lead to recruitment and retention difficulties with a knock-on impact on service provision.

The Draft Outline Business Case lists a number of risks (and benefits) in assessing each option, but they are inconsistent and in some cases include 'statements of fact' rather than risks.

Other services might be included

The Council 'tested the market' by inviting four companies to an interview and to complete a questionnaire. Three participated and responded to the question *"Is the scope appropriate? If not what could be added or removed?"* The response, not surprisingly, was *"Some respondents identified additional services that could be added into scope **including early years and libraries**" (our emphasis).*

They did not suggest removing any services but indicated *"that some services may be subcontracted or delivered in partnership with co-bidders"* (para. 3.3.2, Committee Report).

This is little more than private contractors seeking to maximise their own interests and one of the consequences of 'testing the market'. If services are not included in the options appraisal they should not be added at a later date.

Consequences for jobs, terms and conditions

The Draft Outline Business Case assumes that redundancies will be required in the in-house option and may be required in the LATC option. Since employment risk is not addressed in the outsourcing, schools-led company/social enterprise or the two JVC options with a private contractor, no employment change is forecast in these options. This appears totally unrealistic, particularly since the impact of the additional spending cuts will have an immediate impact whilst additional income generation and new contracts will take time to secure, and even longer to contribute to Barnet's education and skills services.

Barnet UNISON is extremely concerned that previous Barnet Council contracts such as NSL, Capita's CSG and RE and Your Choice Barnet (LATC) led to redundancies and/or significant cuts in terms and conditions. Staff in Education and Skills face similar risks including the loss of the London Living Wage for catering staff.

The in-house options appraisal refers to the cost of redundancies being retained in-house, but no mention of this cost is made in the other five options appraisals (page 12, Draft Outline Business Case). However, the cost of redundancies as a consequences of Barnet Council's outsourcing, such as the NSL and Capita contracts, have been borne by the Council. This is another example of the flawed assessment of options.

Barnet UNISON has contacted the Council and contractors asking them to support the London Living Wage in outsourced contracts. But each time this has been rejected. **If Barnet Council is committed to the London Living Wage, then it must make it a condition of contract.**

Set up costs

The options appraisal, business plan, procurement and establishment of the delivery vehicle are expected to **cost £800,000**.

An initial £100,000 was set aside to prepare the Outline Business Case with a further £150,000 allocated to deliver the assessment phase and a further £50,000 will be required to complete the business case by December 2014 (para. 5.5, Committee Report). **Thus the transaction costs increased threefold in a matter of months.**

Additional costs were incurred when the Customer and Support Group withdrew during the concept phase after Capita expressed an interest in bidding for the contract. Subsequently, the development of options, financial analysis and consultation with schools has been undertaken directly by the Council “...and independent suppliers”. Establishing the delivery vehicle is forecast to cost £500,000 (para. 5.4.2, Draft OBC).

The **bulk of the £800,000** should be allocated to ‘invest to save’ to reduce the impact of spending cuts on education and skills services and increase capability to generate income. Furthermore, contractual payments to Capita should reflect its reduced role in this project.

More consultants!

Additional consultants costs were incurred in the development of options (noted above), but again in further market research for the business case.

“...external support has subsequently been commissioned through a competitive tendering exercise, to provide an independent assessment of the broader market, including the not-for-profit sector, and the commercial opportunities that may exist for these services” (para. 1.32, Committee Report).

It has not been possible to identify the additional consultancy costs – **these need to be published.**

Capita’s conflict of interest

Capita’s withdrawal from the OBC and procurement process raises important issues. The Draft OBC recognises:

“Despite sufficient conflict of interest protocols, there is a risk that Capita is perceived to be unfairly advantaged in any potential procurement, thereby reducing the level of participation from the market in the process” (page 35, Draft OBC).

The risk is given a medium probability in the Draft OBC. We believe there is **high probability** that the sector will perceive that Capita’s two large contracts with Barnet Council give it an unfair advantage. Private contractors may initially express an interest in the contract, but may refrain from bidding and incurring transaction costs. It could lead to the Council failing to obtain **value for money** and **Capita charging premium contract rates**. Capita reported a contract win rate above 2 in 3 in the first six months of this year (Capita plc, 2014).

The risk is mitigated:

“The contractually agreed Ethical Wall and Conflict of Interest protocols have been enacted for this project. Measures have been put in place to ensure that the involvement of CSG/Capita personnel is minimised and that it is restricted to data provision/technical support only. Any procurement process would be designed to ensure that no advantage is gained from existing partnership relationships” (Risk No. 6, page 35, Draft OBC).

However, the Draft OBC for education and skills was approved and signed by the Head of HR and the Head of Finance on 29 August 2014, both of whom are Capita employees and must have had access to additional policy analysis than is contained in the public Committee Report and Draft OBC. Ethical Wall and Conflict of Interest protocols and the restriction to data provision/technical support are unlikely to be persuasive to other contractors.

Recommendations

1. Barnet UNISON recommends a fully resourced innovative in-house option be included alongside further development of the schools-led social enterprise option. The two joint venture options should be rejected together with the outsourcing and LATC options.
2. School catering is a highly successful income generating service serving 90% of schools in Barnet, in which **all surpluses directly benefits schools**. It should be excluded from the scope of the project.
3. If the Committee recommends continuing the JVC options, then **Capita should be approached and asked not to bid** for the education and skills contract.
4. Before the Committee make any decisions the Performance and quality category weighting should be increased from 20% to **40%** with a 10% reduction in the category weightings for Strategic Direction and Cost Saving.

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