

AUDIT AND GOVERNANCE COMMITTEE – 14 November 2018

Update On The Carillion Recovery & Improvement Plan

Report by the Director, Capital, Investment & Delivery

INTRODUCTION

1. In July, the Audit & Governance Committee considered a report on the implementation of the Carillion Recovery & Improvement Plan. The Plan includes four phases of work following the transition of the services from Carillion (phase 1) in February 2018. These include:
 - Phase 2 - Stabilisation** - involving operational issues falling out of the transfer of staff and functions from Carillion
 - Phase 3 - Assessment of Carillion Legacy Issues** - a more detailed assessment of completed and part completed projects, as well as audits of statutory and operational compliance
 - Phase 4 - Implementation** – this includes the programme of work for the rectification of known defects, any work resulting from latent defects and the programme of maintenance, repairs and replacement identified from the asset surveys.
2. This report outlines progress since July on phases 2 – 4 and the next steps for several strands of the project. For some areas, the work is now at the point where it is more helpfully delivered through the business-as-usual (BAU) arrangements, particularly with the new Assistant Directors now in post.

DETAIL

Phase 2 - Stabilisation

3. With the very rapid transfer of staff, it was not possible to fully resolve all the operational issues prior to transfer. These include several HR issues: DBS checks for all relevant staff; ensuring complete recruitment documentation for transferred staff e.g. employment references; assessing the pay, terms and conditions of those staff.
4. All recruitment documentation is in place and while DBS checks have yet to be finalised, risks assessments have been undertaken for all relevant staff. In conjunction with managers, HR is continuing to pursue the remaining DBS checks.
5. The assessment of staff pay is complete and indicates most staff are below OCC pay rates, in addition to other differences in working arrangements, terms and conditions. The overall approach will be to align pay, terms and

conditions of transferred staff with OCC arrangements. This has already been done for catering and cleaning staff.

6. The remaining staff, including managers, are in Facilities Management (FM). This will be considered within the proposals for reconfiguring the service – including roles and grades - that will be implemented early in 2019, as part of a new operating model for FM.
7. These remaining stabilisation issues will now be monitored and managed as part of the business-as-usual arrangements

Phase 3 - Assessment and Rectification of Carillion Legacy Issues

8. This includes five strands:
 - part completed projects
 - rectification of known defects with completed projects
 - treatment of latent defects
 - potential recovery of costs
 - statutory compliance and operational compliance of the non-schools estate
9. **Part Completed Projects** Of the seventeen part completed projects, all the smaller projects (13) involving work on Adults and Children & Families facilities have been completed. Three of the larger school projects – Chilton, Fir Tree and Sutton Courtenay schools - have also been completed. For the remaining projects - Matthew Arnold and West Witney Primary Schools – contracts and contractors are in place, with completion dates between July and August 2019.
10. The continuing oversight and management of these projects and the management of any issues that might arise in relation to these completed projects will be through the Infrastructure Delivery Team within the Capital, Investment & Delivery Directorate, led by the Assistant Director.
11. **Rectification of Known Defects with Completed Projects** Carillion undertook 602 projects over the lifetime of the contract, ranging in value from £5k to £10 million. The total spend on these projects was £123 million.
12. To make the task of assessing the defects more manageable, a 'de minimis' threshold of £20k was set, on the basis that these were minor works e.g. supply of kitchen appliances, with minimal risk/impact on services should any defects occur, and were defects would be straightforward to rectify.
13. The remaining 162 projects (to the value of £102 million of the total spend) were assessed to determine the types and extent of defects. A small number of these were assessed by OCC staff. The bulk of them (147) were surveyed by an external company, TDM Ltd. The surveys identified a range of issues, from missing contract certification, H&S and Operational & Maintenance manuals and building control certification, as well as unsatisfactory fire strategies and planning conditions not fulfilled, to major elements unsuitably executed.

14. While the assessments have provided a sound basis for determining the immediate costs of rectification, given the scale and extent of the issues already identified, it is considered expedient to review these costs to confirm the overall capital provision required to fund the defects programme.
15. Work is underway putting together the detail of the programme, including programme management resources, the approach to procurement of different types of work and a communications plan to ensure regular engagement with end users. The aim is to start the programme in early December.
16. ***Treatment of Latent Defects*** In the normal course of a project, the contractor will rectify defects during the twelve months after project handover. After twelve months, any further defects, or latent defects, are dealt with under the warranty.
17. In the absence of the contractor, the council is taking on the responsibility for dealing with latent defects. The nature of these is unknown at this point, but where they occur, the council will assess what rectification work is required and manage its delivery.
18. Several options for funding these costs have been considered, including insurance from third parties, enforcing the warranties of sub-contractors involved in the projects, or provision by the council, in effect self-insurance.
19. Discussions with insurance providers confirm this would be difficult to obtain, as well as being very expensive. The council does not have the necessary documentation to enforce warranties, which rules out this option.
20. The only viable option therefore is self-insurance. It is proposed to set up a reserve fund within the Capital Programme through the council's capital service and resource planning process. The size of this fund will be agreed by Capital Investment Programme Board, as part of the consideration of the mechanisms and processes for managing latent defects.
21. In terms of the mechanisms for managing this fund and rectification of latent defects, it will include mechanisms for assessing whether it is a defect in the original construction work or the result of other factors e.g. wear and tear, intentional or unintentional damage, lack of maintenance etc. If the latter, this will not be covered by the latent defects arrangements. The programme will be managed and delivered by the Infrastructure Delivery team, led by the Assistant Director.
22. ***Recovery of Costs from the Council by the Carillion Liquidators*** PwC are acting on behalf of the Official Receiver in relation to the Carillion liquidation. Since March there has been a continuing discussion and exchange of correspondence relating to monies PwC claims are owed by the council.
23. The council is in turn claiming the costs of rectification of project defects. (Insolvency legislation requires that any money owed to the council is set-off against any money the council owes.)

24. In relation to the invoices, in June the council provided a detailed analysis, indicating either that they had been paid, or with requests for additional information to investigate further. PwC has not responded to this communication. In relation to the overhead and sinking fund costs, the council has made clear it will not pay these costs, as they occurred after the council had terminated its contract with Carillion.
25. In August PwC again wrote to the council, asking for settlement of the claim and indicating non-payment could result in PwC issuing a statutory demand, selling the debt to a third party or referring the dispute to arbitration.
26. The council replied to PwC at the beginning of September and a meeting is now proposed in November, following the exchange of further information from both sides.
27. **Recovery of Costs by the Council** The council is continuing to consider and pursue other ways it might recover costs from other contractors involved in the Carillion contract.
28. **Statutory Compliance of Non-Schools Estate** Significant progress has been made to assess and ensure full compliance across the corporate (non-schools) estate and the statutory compliance areas (fire; gas; water; electrical; asbestos; lifts).
29. The audit was Initially expected to complete in October, however there has been some delay because of additional buildings being identified that were not in the original scope of the audit. The audit will now be completed by the end of November.
30. For areas where full compliance is not yet achieved, work is underway to achieve compliance, all of which should be completed by the end March 2019.
31. **Operational Compliance - Asset Collection and Condition Surveys** The surveys are underway and are also expected to complete by the end of November. This will provide the information required to develop a five year, prioritised asset maintenance (repair/replacement) programme.

Phase 4 - Implementation

32. The defects rectification programme is in development and will be the responsibility of the Assistant Director, Major Infrastructure Delivery, with oversight by the Communities Working Group, chaired by the Strategic Director.
33. Given the number of major projects relating to schools, the programme is likely to take two years, with a target completion date of August 2020.
34. Once completed, the management and maintenance of the property will become the responsibility of the tenant (i.e. school or corporate FM etc). Should any defects arise after this point it will need to be considered under a different process.

35. The latent defects programme will also be managed by the Infrastructure Delivery team.

Financial and Staff Implications

36. Costs relating to the first three phases of the project fall into three areas:
- additional staffing resources to ensure continuity of service, as well as the development and delivery of solutions to the Carillion legacy issues;
 - funding for the detailed assessment of the project and operational legacy issues
 - costs related to the resolution of staffing legacy issues
37. **Assessment of Carillion Legacy Issues** The costs relating to the assessment of legacy issues are shown below. Please note these costs only relate to the cost of undertaking the assessments/audits, not the rectification works resulting from the legacy issues.

Table 1: Assessment of Carillion Legacy Issues

Activities	2018/19 £000s	Funding
Technical assessment of project defects	450	Agreed through the capital programme
Audit of statutory and operational compliance	1,250	Originally through CLT, but it is proposed that the overspend be reported as part of the routine Finance Monitoring Reporting process #
Total	1,700	

38. **Costs of Defects Rectification** Until such time that all possible avenues have been explored to reclaim the cost of these works, the required budget provision is to be forward funded through the capital programme. The funding mechanisms for this will be determined through the annual service & resource planning process. Possible options could be:
- the reprioritisation or utilisation of current budget blocks within the ten year capital programme
 - utilisation of the £120m prudential borrowing programme
 - or another funding solution.
43. **Funding Latent Defects Rectification** Further analysis of all risks associated with the delivery and funding of the capital programme will be undertaken through the council's service & resource planning process. This will also include a provision for potential latent defects. This will be combined with the risk fund and held within the earmarked reserves of the capital programme and will be managed through the capital governance framework.

Equalities Implications

39. None directly related to the project.

RECOMMENDATION

40. **The Committee is recommended to:**
- a) consider and comment on continuing progress in implementation of the Carillion Recovery & Improvement Plan;**
 - b) note that the costs relating to rectification will be considered within the Council's annual budget cycle and processes for 2019/2020.**

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Background papers: None

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