
REPORT FOR: CABINET

Date of Meeting:	13 July 2017
Subject:	Short Breaks for Children and Young People with Special Educational Needs and Disabilities
Key Decision:	Yes
Responsible Officer:	Chris Spencer, Corporate Director of People
Portfolio Holder:	Councillor Christine Robson, Portfolio Holder for Children, Young People and Schools Councillor Simon Brown, Portfolio Holder for Adults and Older People
Exempt:	No
Decision subject to Call-in:	Yes
Wards affected:	All Wards
Enclosures:	Appendix A Commissioning and Procurement High Level Timescale

Section 1 – Summary and Recommendations

Local authorities have a statutory responsibility to provide a range of short breaks for disabled children, young people and their families. Short breaks

form part of the statutory Local Offer for children and young people with SEND. This report sets out how Harrow Council will meet this statutory requirement.

Recommendations:

Cabinet is requested to:

1. Approve a direct award of the short breaks contract to the three providers currently on the short breaks framework for a period of 9 months (1st October 2017 – 30th June 2018) at a value of £450,000 pending a competitive procurement to award a new contract from 1 July 2018.
2. Agree to consultation with children, young people, families and other interested parties on the future procurement of short breaks provision.
3. Delegate authority to the Corporate Director, People Services, following consultation with Portfolio Holder for Children, Schools and Young People and Portfolio Holder for Adults and Older People, and the Portfolio Holder for Finance & Commercialisation, to consider the consultation results and to procure future short breaks services, including awarding a contract for a maximum of 5 years from 1 July 2018.

Reason: (For recommendations)

The current short breaks framework contract is due to expire on 30 September 2017. To provide sufficient time to carry out consultation with children, young people, parents/carers and other key stakeholders to ensure future provision meet needs and to allow a competitive procurement process to be concluded.

Section 2 – Report

Introduction

1. The commissioning of short breaks services for children, young people with SEND and their families meets the Council's vision to Protect the Most Vulnerable and Support Families.
2. In 2011, a framework of short breaks was commissioned based on the feedback from children, young people and their families, that provided a range of short breaks to meet the different needs of children and young people with special educational needs and disabilities. This framework ends on 30 September 2017 and there is no provision for extension.

3. The Children Act 1989 and the Breaks for Carers of Disabled Children Regulations 2011 place a statutory responsibility on the Council to assist individuals who care for disabled children by giving them breaks from caring. The 2011 Regulations also require a local authority to publish a short breaks services statement and this is now incorporated into the local offer for children and young people with SEN or a disability and their parents. The Children and Families Act 2014 places a duty on local authorities to keep under review its social care provision for children with SEN or a disability and to consult with prescribed persons in relation to such a review. The SEND Code of Practice January 2015 provides helpful guidance on involving and consulting with children, young people and their parents.
4. Short breaks provide children and young people (0-25 years) with the opportunity to access a range of activities, where they can spend time away from their parent/carer and spend time with their peers. Looking after a child with a disability is exhausting and can put even the strongest relationships under strain. Short breaks provide parents/carers with the opportunity to have a 'break' from their caring responsibilities and to spend time with partners and other members of the family.

Options considered

5. The following options were considered:
 - **Option 1** - To undertake a consultation process with children, young people and their families, key stakeholders and partners as part of the commissioning process to enable a tender process to be undertaken for a range of short break services which meet the needs of children, young people and families and which are aligned with other support services that the families can access as part of the Core Offer to prevent family breakdown.
 - **Option 2** - To spot purchase short breaks.

Background

6. Short breaks for children and young people up to the age of 18 are provided through a framework to provide a wide range of activities to children and young people with a wide range of disabilities and their families. The framework provides a range of activities from specialist group-based leisure activities such as holiday play schemes, day and overnight childcare and community outreach.
7. Short breaks are provided to children who meet the following eligibility criteria of the Children and Young Adults with Disability (CYAD) service:
 - (i) Severe physical or learning disability or sensory impairment,
 - (ii) Profound multiple disability
 - (iii) Children with complex and severe health needs including chronic or life limited illnesses

- (iv) Children attending special schools with a moderate learning disability
 - (v) Children with Autism who also meet one of the above criteria.
8. Allocations of short breaks are based on an assessment of the whole family addressing both their personal and social needs. This includes an assessment of the child's needs and of parenting capacity. Requests are then presented by social workers to CYAD panel for funding agreements. Those on Core Offer qualify via receipt of mid to high rate DLA from DWP.
 9. The current framework ends on 30 September 2017 and to fulfil the requirement of the local authority to provide short breaks there needs to be a continuous service in place until the new procurement has been completed.

Why a change is needed

10. The current framework is based on the needs identified in the consultation carried out in 2014 as part of the commissioning of the new service. Consultation is required to ensure that services are commissioned that meet current needs and are complementary with other support provided to families.
11. Feedback from initial consultation with practitioners from the Children and Young Adults Disabilities Team (CYAD) shows that an increasing number of children, young people and families are requiring short breaks and the complexities of the child/young person are increasing with insufficient short breaks provision in place to support those with the most complex needs. These families are particularly vulnerable and need short breaks to improve outcomes for the child/young person, to keep the family together and to avoid or delay the need for the child/young person to be placed in residential placement.
12. The Office for National Statistics (ONS) predict an increase in Harrow's 0 – 19 population to 67,000 by 2021 and 69,000 by 2026. The increase is mainly within the 10 – 14 age group.
13. In moving forward the new short breaks service needs to:
 - Ensure the short breaks offer aligns with the Post 16 offer.
 - Reflects the needs of children, young people and their families.
 - Align short breaks with other support families can access as part of their package of care to reduce or delay breakdown and a need for residential placement.
 - Stimulate the market to provide a wider range of short breaks that meet current needs at competitive rates.
 - Ensure service provision is value for money through providing appropriate support within the community to keep families together and reduce/delay the need for more expensive residential placements.

Procurement Considerations

Direct Award (1st October to 31st June 2018)

14. In order to continue Short Breaks framework it is proposed to issue a Direct Award to the existing providers on the framework.

Future Procurement (1st July 2018 onwards)

15. It is proposed that there is a new contract for 3 years with an extension of 1 year plus a further 1 year. This allows for service continuity to service users and gives officers the flexibility to review the service.
16. Officers are exploring procurement options for future Short Breaks provision to ensure that the new service provision offers a wide range and flexibility to meet the needs of the Children and Young Adults with disabilities which are increasingly complex.
17. The model will also need to include options for direct payment, personal choice and potential for personal budgets. Adult Social Care will provide support and advice on whether the successful established personalisation model within Adult Social Care can be reflected for Short Breaks provision. Personal budgets and the 'self-directed support' model are key features of the Personalisation model which will need testing. This could offer disabled children and their families a greater deal of flexibility and control. We will therefore try and ensure value for money is maximised.
18. The emerging preferred option would be to offer families a menu of support from providers to meet a wide range of needs for Children and Young Adults with learning disabilities.
19. The consultation will inform the future model to whether a list of preferred providers would be the best way forward to incorporate the use of personal budgets. This will also allow flexibility, choice and control for parents and carers.

Consultation

20. During the nine month period, officers will be undertaking consultation with key stakeholders to understand their experience of local activities and short breaks for disabled children, young people and their families. The new service will be co-designed and will inform the procurement.
21. Officers will use a range of approaches to engage and consult with key partners including workshops, meetings and surveys. The consultees are set out in the Legal section and include specifically:
 - Parents and Carers known to Children and Young Adults with Disabilities service. Questionnaires will be circulated to obtain feedback from this group via social workers.
 - Harrow Parents for Disabled Children Forum

- 3rd Sector providers with an opportunity to carry out focus groups alongside the providers. Officers will also hold a market engagement event with providers.
22. The consultation and engagement outcomes will be analysed to inform the service model and procurement route. This will be presented to the Corporate Director to inform the decision.
23. The Commissioning and Procurement High Level Timescale is at Appendix A.

Risk Management Implications

24. Risk included on Directorate risk register? No
25. Separate risk register in place? No
26. Risks are:
- Without a commissioned service(s) short breaks will need to be spot purchased which will delay families accessing short breaks, be resource intensive and significantly more costly.
 - Without access to short breaks, families will be unable to cope and the child/young person will need residential placement.
 - The Council may breach public procurement regulations.
 - The Council will not meet its statutory responsibilities.

Legal Implications

The Children Act 1989 imposes a general duty on local authorities to safeguard and protect the welfare of children in their area who are in need of services. Specific duties and powers are contained in Schedule 2 of the 1989 Act. Paragraph 6(1) of Schedule 2 imposes a duty on local authorities to provide services designed to assist individuals who provide care for disabled children to continue to do so, or to do so more effectively, by giving them breaks from caring.

The Breaks for Carers of Disabled Children Regulations 2011 provides further detail of these duties. Regulation 3 provides that in performing its duty, a local authority must:

“(i) have regard to the needs of those carers who would be unable to continue to provide care unless breaks from caring were given to them; and
(ii) have regard to the needs of those carers who would be able to provide care for their disabled child more effectively if breaks from caring were given to them to allow them to:

- (a) undertake education, training or any regular leisure activity,
- (b) meet the needs of other children in the family more effectively, or
- (c) carry out day to day tasks which they must perform in order to run their household.”

Regulation 4 sets out the types of services which a local authority must provide, so far as is reasonably practicable. These services must be sufficient to assist carers to continue to provide care or to do so more effectively and must include, as appropriate, a range of:

- (a) day-time care in the homes of disabled children or elsewhere,
- (b) overnight care in the homes of disabled children or elsewhere,
- (c) educational or leisure activities for disabled children outside their homes, and
- (d) services available to assist carers in the evenings, at weekends and during the school holidays.”

Regulation 5 requires a local authority to prepare a statement for carers in their area, known as a short breaks services statement, which gives details of the range of services provided in accordance with regulation 4, including eligibility criteria and how the range of services is designed to meet the needs of carers. Such a statement must be kept under review and revised as appropriate.

Section 27 of the Children and Families Act 2014 imposes a duty on local authorities to keep under review its educational, training and social care provision both inside and outside its area for those children and young people with SEN or a disability within its area. This includes considering the extent to which provision is sufficient to meet the educational, training and social care needs of the children and young people concerned.

Subsection (3) imposes a duty on local authorities to consult the following:

- (a) children and young people in its area with special educational needs, and the parents of children in its area with special educational needs;
- (b) children and young people in its area who have a disability, and the parents of children in its area who have a disability;
- (c) the governing bodies of maintained schools and maintained nursery schools in its area;
- (d) the proprietors of Academies in its area;
- (e) the governing bodies, proprietors or principals of post-16 institutions in its area;
- (f) the governing bodies of non-maintained special schools in its area;
- (g) the advisory boards of children's centres in its area;
- (h) the providers of relevant early years education in its area;
- i. the governing bodies, proprietors or principals of other schools and post-16 institutions in England and Wales that the authority thinks are or are likely to be attended by:
 - children or young people for whom it is responsible, or
 - children or young people in its area who have a disability;
- (j) a youth offending team that the authority thinks has functions in relation to:
 - i. children or young people for whom it is responsible, or
 - ii. children or young people in its area who have a disability;
- (k) such other persons as the authority thinks appropriate.

Section 30 of the 2014 Act provides that a local authority publish information about its provision for children and young people for whom it is responsible and children and young people in its area who have a disability. The provision concerned includes social care provision and as such includes the provision of short breaks for families of children and young people with a disability. Such information is known as the local offer. A local authority must keep its local offer under review and revise it as appropriate. It must also publish from time to time comments (in an anonymous format) from families about its local offer and its response to such comments.

Section 149 of the Equality Act 2010 requires public bodies, including local authorities, to exercise their functions with due regard to three factors, namely the need to (a) eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the 2010 Act, (b) to advance equality of opportunity between those who have a relevant protected characteristic and those who do not, and (c) to foster good relations between those who have a relevant protected characteristic and those who do not. Section 149(3) explains that having due regard to the need to advance equality of opportunity includes the need to remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic, taking 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 and encouraging 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. Subsection 4 confirms that 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. Subsection 6 states that compliance with the duties in this section may involve treating some persons more favourably than others.

Any extension of the current contracts with current framework providers must comply with the Public Contracts Regulations 2015 (PCR), in particular Regulation 72 of the PCR.

Under Regulation 72 contracts can be extended without a new procurement where additional services from the original contractor have become necessary and were not included in the initial procurement, where a change of contractor cannot be made for economic or technical reasons relating to existing services procured under the initial procurement, or where a new procurement would cause significant inconvenience or substantial duplication of costs for the contracting authority, provided that any increase in price does not exceed 50% of the value of the original contract.

The proposed extension is less than 50% of the value of the original framework contracts and the other requirements of Regulation 72 are likely to be met here, due to the personal nature of the services and the vulnerable client base, and changing contractors for 9 months only would be expensive and inconvenient at this time.

A waiver of Contract Procedure Rules (CPR) is also required under CPR 13 to waive the requirement to conduct a tender process to award the contracts to the existing framework contractors via a Procurement Gateway Two award

report to be completed and submitted to the Commissioning and Commercial Board. HBPL should be instructed to complete the contract extensions.

Financial Implications

The short breaks expenditure is included in the all-age disability budget within Adult Social Care. The 2017-18 budget in relation to service costs for these users totals £1.5m. Of this amount, in 2016-17 approximately £550k was spent on short breaks and was paid through direct payments, s17 payments as well as the existing framework agreement.

The funding is assumed to continue, subject to the 2018-19 budget setting process. There are no further MTFs proposals attached to this funding.

Given the increasing complexity of care and the number of families requiring short breaks, any reduction achieved through the reprocurement exercise will assist in containing the expenditure within the available budget.

Equalities implications / Public Sector Equality Duty

27. Section 149 of the Equality Act 2010 requires that public bodies, in exercising their functions, have due regard to the need to (1) eliminate discrimination, harassment, victimisation and other unlawful conduct under the Act, (2) advance equality of opportunity and (3) foster good relations between persons who share a protected characteristic and persons who do not share it.
28. An initial Equalities Impact Assessment has been undertaken and indicates that the implications are either positive or neutral in that the continuation of the contract and the procurement of the new service. The assessments have not identified any potential for unlawful conduct or disproportionate impact and conclude that all opportunities to advance equality are being addressed.
29. The Equalities Impact Assessment will be reviewed and informed by the consultation outcomes.

Council Priorities

The Council's vision:

Working Together to Make a Difference for Harrow

The re-commissioning of services to provide short breaks for children, young people and the families who have special educational needs will meet the following Council visions:

- Making a difference for the vulnerable

Providing a short breaks for children and young people will enable them to interact with others including peers, access activities and improve confidence and self-esteem.

- Making a difference for communities
Short breaks will provide the opportunity and confidence for families to integrate into the community.
- Making a difference for families
Short breaks contributes to keeping families together through providing opportunities for the parents/carers to have a break from their caring role.

The short breaks service also contributes to the Council’s vision within the Harrow Ambition Plan 2020 “Protecting the Most Vulnerable”.

Section 3 - Statutory Officer Clearance

Name: Donna Edwards	<input checked="" type="checkbox"/>	On behalf of the Chief Financial Officer
Date: 7 June 2017		
Name: Sarah Wilson	<input checked="" type="checkbox"/>	On behalf of the Monitoring Officer
Date: 7 June 2017		

Ward Councillors notified:	NO as it impacts on all Wards
EqIA carried out:	An initial EqIA was completed See para 23.
EqIA cleared by:	People Services DETG

Section 4 - Contact Details and Background Papers

Contact:

Johanna Morgan, Divisional Director Peoples Service Strategy, 020 8736 6841, Johanna.morgan@harrow.gov.uk

Kim Chilvers, Commissioner, 020 8736 6292, kim.chilvers@harrow.gov.uk

Background Papers: None

**Call-In Waived by the
Chair of Overview and
Scrutiny Committee**

NOT APPLICABLE

[Call-in applies]

APPENDIX A

Commissioning and Procurement High Level Timescale

Procurement Procedures that are being explored are Competitive Procedure with Negotiations and a Dynamic Purchasing System (DPS)

High Level Project timetable (anticipated dates, these are subject to change)

Commissioning Phase	Date
Scoping The Service	July 2017 – 30 th September 2017
Understanding other Neighbouring Boroughs Commissioning Intentions	July 2017 – 1 st September 2017
Engagement and consultation with stakeholders (on-going through procurement process)	July 2017 – October 2017
Procurement Process	
Early Market Engagement with Providers	October 2017
Procurement Process to Commence	December 2017 – 31 st March 2018
Award	April 2018
Mobilisation and Transitional Arrangements (3 month period)	April 2018 – June 2018
Contract "Go Live"	1 st July 2018