

Report for: Cabinet

Date of Meeting:	18 November 2021
Subject:	Short Breaks for Children and Young People with Special Educational Needs and Disabilities
Key Decision:	Yes – the decision sought will incur expenditure in excess of £500k and have an impact on all wards.
Responsible Officer:	Paul Hewitt - Corporate Director, People Services
Portfolio Holder:	Cllr Christine Robson - Portfolio Holder for Education and Social Services for Children and Young People Cllr Simon Brown - Portfolio Holder for Adults and Social Care
Exempt:	No
Decision subject to Call-in:	Yes
Wards affected:	All Wards
Enclosures:	None

Section 1 – Summary and Recommendations

This report sets out how Harrow Council will meet the statutory requirement to provide a range of short breaks for disabled children, young people and their families.

Recommendations:

Cabinet is requested to:

1. Approve the commencement of a competitive procurement process for a Short Breaks Service; and
2. Delegate authority to the Corporate Director of People Services, following consultation with Portfolio Holder for Education and Social Services for Children and Young People, Portfolio Holder for Adults and Social Care, and the Portfolio Holder for Finance & Resources, to award the contract, following the competitive procurement process.

Reasons (for the recommendations):

To procure a Short Breaks service to fulfil the statutory requirement for Special Educational Needs and Disability (SEND) within the Children and Families Act 2014 for Local Authorities to commission services which provide families in need of respite, a choice in provision.

Section 2 – Report

Introductory paragraph

1. This report provides Cabinet with details about the requirements for local authorities to provide a short breaks or respite services for children and young people with learning disabilities and the approach to commissioning a new service when the current contract ends in June 2022.
2. The commissioning of Short Breaks Services for Children, Young People with SEND and their families contributes to the Council's vision of addressing health and social care inequality and to ensure "Right support, Right Type, Right Time".
3. The Special Educational Needs and Disability (SEND) requirements within the Children and Families Act 2014 places a responsibility on local authorities to commission services which provide families in need of respite, a choice in provision.
4. The current Short Breaks local offer is delivered through a framework contract, enabling children and young people with disabilities aged 0 - 18 to access to a variety of activities whilst providing their parent/carer with a

break from their caring responsibilities. The current framework contract ends on the 30th June 2022.

Options considered

5. The following options are considered:

Option 1. Allow the service to come to the end of the contract, current provision expires 30 June 2022 and spot purchase Short Breaks as and when required.

Option 2. Commence a competitive tendering exercise

Recommendation: Option 2 to commence a competitive tendering exercise to ensure we procure flexible, high quality provision which will meet the needs of children, young people and families.

Background

6. The Children Act 1989 and the Breaks for Carers of Disabled Children Regulations 2011 (2011 Regulations) place a statutory responsibility on local authorities to assist individuals who care for disabled children by providing breaks from caring.
7. The 2011 Regulations also require a local authority to publish a Short Breaks Services statement which is incorporated into the local offer for children and young people with SEN or a disability and their parents. The local offer contains information regarding services and provision that is available for children and young people for whom it is responsible and children and young people in its area who have a disability.
8. 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.

Current situation

9. Short breaks provide children and young people (0-25 years) with the opportunity to access a range of activities such as afterschool clubs, holiday playschemes, arts, crafts, sports, overnight childcare, community outreach, where they can spend time away from their parent/carer and spend time with their peers. Caring for a child or young person 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.

During a competitive tendering process in 2018, seven providers delivering a variety of these activities were awarded a contract to be part of the Short Breaks Framework. The aim of the framework was to have a maximum

price that the service would be offered with the opportunity for providers to reduce the cost based on the needs of the young person through a bidding process and to provide choice to families

10. The framework has not been operating as originally intended. Consultation with both internal practitioners and service providers showed this has been due to a number of reasons:

- insufficient time to operate a mini-bidding system each time a short break was offered to a family
- families wanted to use the provider who was already established within the Borough
- providers were unable to offer the support required to the child

Why a change is needed

11. As the current Framework contract ends in 2022, there is the opportunity to engage with a relatively small market to consider a range of procurement options and models, including block contracts, subcontracting, in order to secure providers that meet the family's needs. A learning exercise with other local authorities will help inform our overall service design and offer.

12. 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.

13. 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.

Co-Production

14. Through consultation and co-production with service users, relevant council departments, stakeholders, voluntary sector providers the new operating model will be developed. This engagement and co-production have commenced and will be on-going to inform a new service and procurement route.

15. A new service provision will ensure there 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.

16. During the competitive tendering process in 2018, seven providers delivering a variety of activities were awarded a contract to be part of the Short Breaks Framework. To date, only 4 of these providers are actively

being used. The framework has not been operating in the way it was originally commissioned and comes to an end on 30th June 2022.

Environmental Implications

17. During the procurement activity, appropriate climate control questions will be asked of providers to ensure they are delivering services in line with the low carbon emissions pledge.

Data Protection Implications

18. There are no data protection implications

Risk Management Implications

Risks included on corporate or directorate risk register? **No**

Separate risk register in place? **No**

The relevant risks contained in the register are attached/summarised below.
n/a

19. The following key risks should be taken into account when agreeing the recommendations in this report:

Risk Description	Mitigations	RAG Status
No local service providers submit a tender	Current providers sufficiently delivering, can spot purchase from them and other voluntary sector providers	Green
Without access to short breaks, families will be unable to cope, and family break down may happen.	A residential placement will be made.	Green
The Council may breach public procurement regulations.	The procurement process will be conducted in accordance with Procurement Public Contracts Regulations (amended) 2015 and the Councils Contract Procedure Rules (CPRs) and Legal will be supporting and providing advice.	Green

Risk Description	Mitigations	RAG Status
The Council will not meet its statutory responsibilities.	If following the procurement process a provider is not identified and awarded, the Council will spot purchase placements.	Green
Procurement cost is not contained within available budget	Bids which exceed our available budget will not be accepted and we would re-tender the contract to remain within budget	Green

Procurement Implications

20. 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. Following a soft market testing exercise the Council will follow a competitive tender exercise in accordance with the Public Contract Regulations 2015 (amended) and the CPRs to identify a contractor or contractors
21. The model will 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. Whilst maximising value for money.
22. 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.
23. 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.
24. It is proposed that the initial contract length will be 3 years with an option to extend for a period of two years as two one-year extensions. The Procurement approach will be finalised in consultation with the Corporate Director of People Services, Director of Adult Social Services and Portfolio Holders for Adults and Children's Services.

Legal Implications

25. The Children Act 1989 (the 1989 Act) 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.
26. The Breaks for Carers of Disabled Children Regulations 2011 provides further detail of these duties. Regulation 3 of the 2011 Regulations provides that in performing its duty, under paragraph 6(1)(c) of Schedule 2 to the 1989 Act 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.”
27. Regulation 4 of the 2011 Regulations 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.”
28. Regulation 5 of the 2011 Regulations 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.
29. 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) of Section 27 of the Children and Families Act 2014 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.

30. Section 30 of Children and Families Act 2014 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.

31. The procurement exercise to be undertaken for the services detailed under this report, will be subject to and conducted in accordance with the Public Contracts Regulations 2015 as amended, which the Council have to adhere to as a public body and the Council's Contract Procurement Rules. The proposed contract value will exceed the current procurement thresholds; therefore the competition must follow the prescribed process set out in the Public Contracts Regulations 2015. The procurement exercise will also be subject to the principles of equal treatment, fairness and non-discrimination.

32. The Council's Contract Procedure Rules provides that a procurement of the value such as the one under this report is a key decision and must be approved by cabinet prior to any tender activity commencing, which is the approval sought under this report.
33. The proposed contract will be in the form approved by the Council's Legal Services, HB Public Law, who will also advise as necessary throughout the procurement process.

Financial Implications

34. The short breaks expenditure is included in the all-age disability budget within Adult Social Care which totals £3.641m in 2021-22.
35. The budget is managed at cost centre level as services year on year will be provided on the basis of the assessed needs presenting, resulting in service specific expenditure which fluctuates on an annual basis.
36. The 2020-21 budget in relation to short breaks totalled £1.410m with the actual expenditure totalling £0.834m (£1.219m in 2019-20).
37. For 2021-22 the budget allocated to short breaks remains at £1.410m with the expenditure forecast at £1.125m.
38. The funding is assumed to continue and there are no further MTFs proposals attached to this funding. It is proposed that there is a 3-year contract with two extension period of one year, giving a maximum contract duration of 5 years. The total value of this contract over this maximum contract period is £7.05m.
39. The procurement and eventual award of contract is expected to be delivered within the existing budget. Given the increasing complexity of care and the number of families requiring short breaks, any reductions achieved through the re-procurement exercise will assist in containing overall all-age disability related expenditure.

Equalities implications / Public Sector Equality Duty

40. 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.
41. 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.

42. The Equalities Impact Assessment will be reviewed and informed by the consultation outcomes.

Council Priorities

Please identify how the decision sought delivers these priorities.

43. **Addressing health and social care inequality** – ensure we meet our statutory responsibility to provide short breaks to children, young people with disabilities and to their carers.

Section 3 - Statutory Officer Clearance

Statutory Officer: Donna Edwards

Signed on behalf of by the Chief Financial Officer

Date: 2 November 2021

Statutory Officer: Blessing Enejo

Signed on behalf of by the Monitoring Officer

Date: 27 October 2021

Chief Officer: Paul Hewitt

Signed off by the Corporate Director, People Services

Date: 25 October 2021

Head of Procurement: Lisa Taylor

Signed on behalf of the Head of Procurement

Date: 22 October 2021

Head of Internal Audit: Neale Burns

Signed on behalf of the Head of Internal Audit

Date: 02 November 2021

Mandatory Checks

Ward Councillors notified: NO, as it impacts on all Wards

EqIA carried out: YES

The EqIA will be carried out as part of the consultation process

EqlA cleared by: N/A

Section 4 - Contact Details and Background Papers

Contact: Priya Ganatra, Strategic Commissioning Manager
priya.ganatra@harrow.gov.uk

Background Papers: None

Call-in waived by the Chair of Overview and Scrutiny Committee

NO