



REPORT TITLE: Short Breaks for Children and Young People with Disabilities

Cabinet Date	21 July 2021
Cabinet Member	Cllr Stephen Davies - Cabinet Member for Children's Safeguarding and Early Years.
Key Decision	Yes
Purpose of Report	To seek Cabinet support for a revised strategy for the commissioning of short breaks for children and young people with disabilities and to seek delegated authority to conduct the associated procurement processes.
Recommendations	<p>That Cabinet ;</p> <ol style="list-style-type: none">(1) Agree the proposed commissioning strategy and timeline.(2) Authorise the Executive Director of Children Services in consultation with the Cabinet Member for Children's Safeguarding and Early Years to:<ol style="list-style-type: none">a) Conduct a compliant competitive tender process for the development of a three-year contract with the option to extend for a further two years for directly provided Short Break services.b) Determine whether to exercise the option to extend the contract for a further period of not more than two years on the expiry of the initial two year term.c) Conduct a competitive procurement process in respect of a three year Framework Agreement for the supply of activity provisiond) Award such Framework Agreement to the preferred tenderer (s);e) Procure and award Call-Off Contracts for the supply of activity provision under such Framework Agreement whose combined aggregate value shall not exceed £3mf) The combined value of both the contracts and the Framework is estimated as £8.3m over the Five years for the delivery of Short Breaks services for children and young people with additional needs.g) Upon conclusion of the competitive tender process, to enter into contract arrangements with preferred providers to develop a framework of approved providers.

Reasons for recommendations	Existing GCC contracts for short break provision are coming to an end in March 2022 and will require to be retendered. The opportunity afforded by this has been taken to review the current Short Breaks offer in light of the pandemic and the closure of a large provider in order to deliver a more varied and consistent service across Gloucestershire and to meet expressed views of parents and carers. This report details the suggested way forward.
Resource Implications	Within existing devolved budgets
Background Documents	<u>GCC Short Breaks Statement</u>
Statutory Authority	Children Act 1989 Breaks for Carers of Disabled Children Regulations 2011 Chronically Sick and Disabled Persons Act 1970 Children Act 2004 Children and Families Act 2014 Equality Act 2010 NHS Act 2006 (as amended by the Health and Social Care Act 2012) Care Act 2014 (in relation to transition to adult social care)
Divisional Councillor(s)	All
Officer	Wendy Williams, Assistant Director for Integrated Children and Families Commissioning 01452 328526 07796611068 wendy.williams3@gloucestershire.gov.uk
Timeline	April 2021: New Short Breaks Working Group established May half term; Increased short breaks provision via existing providers and Special Schools (measured against Summer 2020 provision) and for subsequent School holidays whilst the Tender processes are completed. July 2021: Initial needs analysis completed Early Sept 2021: Short Breaks Sufficiency Strategy developed and agreed New Specifications for existing contracts to be developed for 3 year plus 2 years contracts Oct – Dec 2021: Existing short break contracts tendered Jan 2022: Tender for pseudo Framework Agreement for directly commissioned Short Break services issued

April 2022: Short Breaks contract start

Sept 2022: New pseudo Framework providers start

1. Background

- 1.1 Since 1991 Gloucestershire County Council (GCC) has been under a legal duty to provide access to information and support for children and young people with a disability and their families. The impact of this provision is intended to promote and support the resilience of families or carers and allow children and young people with disabilities to access age and ability appropriate inclusive play and social opportunities. These duties have been further strengthened by the Children and Families Act 2014 which introduced Education, Health and Care Plans (EHCP's) and the notion of co-production in the development, commissioning and review of services to children and young people with a special educational need or disability.
- 1.2 Due to the mixed rural and urban demographics of the county there is a risk of social isolation amongst children and young people with disabilities which can be compounded by the accessibility of public transport. There is a strong evidence base to suggest that reducing social isolation both for children and young people with disabilities and their families is a key protective factor leading to better outcomes in adult life.
- 1.3 The Covid19 pandemic has resulted in a very challenging scenario for short breaks providers with demand being variable as a result of children and young people 'shielding' or finding social distancing a significant challenge. This has been compounded by provider staff shortages and a large provider (Hop, Skip and Jump – HSJ) going into administration and then closing. Information from individual parents, the Gloucestershire Parent Carer Forum and independent support providers confirms that parents have faced significant difficulties in finding safe local short break provision to meet their needs especially when they have been in receipt of a Direct Payment to employ Personal Assistants.
- 1.4 The existing Short Break arrangements have not been reviewed for some time, to that end a new Short Breaks Working Group has been established led by a GCC Commissioner which met for the first time on 27 April with representation from parents, local providers and a representative from the Gloucestershire Association of Special School Heads. The parental representation is being ensured through the Gloucestershire Parent Carer Forum. Further work is ongoing to enable the voice of children and young people to be heard.

2. Legal framework

- 2.1 The Local Authority has a number of duties associated with short breaks which include those owed to individual children and families in relation to assessment and care planning and wider commissioning obligations on local authorities. The key statutory duties are to be found within the following legislation:

- Children Act 1989 and the Breaks for Carers of Disabled Children Regulations 2011
- Chronically Sick and Disabled Persons Act 1970 ('CSDPA 1970')
- Children Act 2004
- Children and Families Act 2014
- Equality Act 2010
- NHS Act 2006 (as amended by the Health and Social Care Act 2012)
- Care Act 2014 (in relation to transition to adult social care)

- 2.2 The starting point for consideration of the legal framework relating to short breaks is the general duty to provide services for children in need under section 17(1) of the Children Act 1989. The duty is to 'safeguard and promote the welfare of children within their area who are in need; and so far, as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.'
- 2.3 All 'disabled' children are children 'in need' (section 17(10)(c) and (11)). There is no requirement for a child to have a particular level of disability or to need any support from the local authority to qualify as a child 'in need'. All that matters is that the child falls within the definition of 'disabled' in section 17(11), which reads as follows; 'a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity.' The quantum of service required to meet the need will be determined by assessment.

The Short Breaks Duty

- 2.4 Paragraph 6 of schedule 2 of the Children Act 1989 provides that;

(3) Every local authority shall provide services designed—

(a) to minimise the effect on disabled children within their area of their disabilities;

(b) to give such children the opportunity to lead lives which are as normal as possible; and

(c) to assist individuals who provide care for such children to continue to do so, or to do so more effectively, by giving them breaks from caring.

The duty in para 6(1)(c) of schedule 2, often described as the 'short breaks duty', was inserted by the Children and Young Persons Act 2008. It was intended to ensure that the improvement made by investment in short breaks through the Aiming High for Disabled Children programme was not lost. The effect of the short breaks' duty is that the services provided by every local authority to children in need must include both 'crisis' breaks and breaks designed to ensure that family life can be sustained effectively.

- 2.6 Regulations have been made to supplement the short breaks duty, in the form of the Breaks for Carers of Disabled Children Regulations 2011 ('the 2011 Regulations'). The key regulations are as follows;

- Regulation 3: Duty to make provision
- Regulation 4: Types of services which must be provided
- Regulation 5: Short breaks services statement

2.7 The current GCC Short Breaks statement was written some time ago in preparation for the introduction of the SEND reforms. There is an urgent need to fully review this Statement.

3. Current Situation

3.1 Day Short Breaks are currently provided through a combination of;

- directly commissioned services comprising of 5 contracts for activity provision and support, these contracts end 31 March 2022 and will require retendering;
- a pseudo framework for the provision of floating support;
- spot purchasing from a number of providers
- Direct Payments to parents and carers to buy their own provision (usually Personal Assistants where they are available).

3.2 Overnight Short Breaks are provided either by the provision of a service from Hartwood House, our in-house residential respite provision, by Family Link, our in-house family based fostering scheme or by external commissioning.

3.3 Provision is not uniform across the Council area with particular challenges in the Forest of Dean, the north and east Cotswolds and to the south of Stroud. As can be seen from the tables below most children and young people classified as an open case to Children's Social Care Locality Teams live in the Gloucester, Cheltenham, Stroud triangle. Please note however those open to DCYPS or DCYPS Early Help are not differentiated by District Council area and further mapping is being undertaken.

Demand

3.4 Open cases of children and young people identified as disabled can feature in the caseloads of either the specialist Disabled Children and Young Persons Service (DCYPS), the DCYPS Early Help Service or be allocated to one of the Locality Teams if their needs have been assessed as not meeting the threshold for DCYPS. The tables below show the open allocated cases by team and those open to Early Help.

Allocated Team at Report Date	CiN/ Open Referral	CLA	CP	Total
Cheltenham	33	12	8	53
Children's Permanence Team (under 11s)	0	11	0	11
Cotswolds	10	3	3	16
DCYPS	54	27	8	89
Forest of Dean	7	1	4	12

Gloucester	42	9	6	57
Stroud	30	8	5	43
Tewkesbury	12	5	2	19
Total	187	76	36	299

Early Help

Cases can also be held in the DCYPS Early Help Service or be 'Open to Review'¹

Age	Open Cases		Total Open	Open to Review		Total Open to Review	Grand Total (Open plus Open to Review)		
	Gender			Gender			Gender		Total
	Male	Female		Male	Female		Male	Female	
0 – 4	6	2	8	1	1	2	7	3	10
5 – 11	30	18	48	55	21	76	85	39	124
12 – 19	43	20	63	48	29	77	91	49	140
Total	79	40	119	104	51	155	183	91	274

In total therefore there are 573 cases open to Children's Social Care in one guise or another in different teams. The development of Short Breaks services will need to address these varying levels of need and locality.

Commissioning

3.5 Responsibility for the commissioning of Short Breaks has recently passed to the Integrated Children and Families Commissioning Hub. The Hub recognises the current challenge in the delivery of high quality, short break provision post pandemic/lockdown. As noted the provision of Short Breaks has been hard hit by the pandemic for a variety of reasons. The difficulty experienced by the Local Authority in finding providers with capacity and/or capability to provide the assessed provision has meant that in many cases a Direct Payment has been offered to the family instead. This has left many families reporting problems in finding suitable provision and that the stress of managing a Direct Payment outweighs the advantages, it has also in some cases seen considerable unspent funds accrue in Direct Payment bank accounts. Other learning from the pandemic and the demise of Hop, Skip and Jump is the need to ensure that new and existing services meet the following criteria;

- a) Accessible – not only in the traditional sense but also in terms of travel time, delivering a service based solely in the Gloucester/Cheltenham/Stroud area may meet the needs of the majority of our population but excludes those living in other parts of the County;
- b) Inclusive – where appropriate and exclusive when required;
- c) Sustainable – providers should be financially sound and well regulated.

¹ 'Open to Review' cases are generally stable cases where needs are understood well, do not vary greatly over the year and where the support package can be appropriately managed by the parent or carer. They are usually reviewed on an annual basis.

Whilst also remaining true to the current strategy.

- 3.6 To meet the challenges identified the Integrated Hub proposes the following changes to our purchasing strategy;
- a) Firstly to hypothecate a proportion of the available Short Break budget away from Direct Payments to allow for the direct commissioning by the Council of more services whether by contract or a pseudo Dynamic Purchasing System. Parents have reported significant difficulties during the pandemic in finding services to purchase or Personal Assistants (PA's) to employ via their Direct Payment accounts and have requested that the Local Authority assume more commissioning responsibility. This will manifest itself firstly in the specification and retendering of the direct provision and support contracts designed to be accessible, inclusive and sustainable;
 - b) Secondly the existing pseudo Framework for Floating Support will be re-energised through a combination of more frequent monitoring and conversation with providers to spot patterns and challenges in order to increase capacity and usage;
 - c) Thirdly the development of a new pseudo Framework focussed on activities and active play to deliver on a county wide basis, and;
 - d) Finally an 'approved' list will be available to families should they wish to continue to contract high quality services directly.

Co-production

- 3.7 To enable this to happen the engagement of children, young people, their parents and carers will be essential. Gloucestershire has already established via the publication of the Engagement and Participation Strategy for Services working with Children and Young People with Additional Needs and their Parents and Carers in 2019 how it's service providers, County Council staff, and partner organisations will work with people with disabilities and carers as equal partners in the design, development, commissioning, delivery, monitoring and review of support and services. Through this Strategy and working together we aim to deliver the following priorities:
- Children, young people and parents will be encouraged to be equal partners in developing plans and agreeing outcomes to be achieved. Every effort will be made to seek their views, reflecting on the vital role parents/family play in supporting their child's development
 - Children, young people and parents will play a key role in co-producing and developing services across health, education and social care – particularly those specifically for children and young people with special educational needs and disabilities;
 - Engagement and participation are vital to ensuring the services we provide meet the needs of the people who use them.
 - Listening to children, young people, parents and carers and working together helps services to know what works and where changes and improvements are needed.

- 3.8 The combination of greater clarity of numbers of children and young people eligible for Short Breaks, understanding the needs and wishes of children, young people and their parents/carers and a clearer appreciation of the effect of the pandemic on existing providers and new entrants will enable a comprehensive Sufficiency Strategy to be co-produced and shared with prospective providers. This in turn will lead to more effective commissioning of services and better outcomes, including;
- Giving families choice and control over services;
 - A reduction in the need for expensive residential education and/or social care placements, often situated some distance from Gloucestershire;
 - Supportive, enabling and maintaining children and young people to remain within their families and local communities.
- 3.9 The timeline to achieve the actions identified is noted above.
- 310 Cabinet is invited to agree the proposed retendering of existing contracts, the new Framework and the timeline. To support these processes, it is suggested that Cabinet delegates authority to award the contracts to the Executive Director of Children's Services.

4. Options

- 4.1 The Local Authority is required to have a Short Break provision for eligible children, young people and their parents/carers. The following options have been considered in the development of this proposal;

a) Stay as we are/Do nothing

This is not tenable, current arrangements are coming to an end in March 2022 and doing nothing would mean the council was unable to meet legal obligations.

b) Tendering the Short Break direct provision contracts and the development of a new Activity pseudo Framework

This offers the opportunity to mould provision to the Council's needs through close engagement with providers in the tendering of direct provision contracts. The development and tendering of a new Activity pseudo Framework using the light touch regime of the public contract regulations to modify the framework as a pseudo-framework allows the Council to change the length of the framework to encourage market development and options such as reopening the framework at a later date to accommodate new providers.

c) Revitalising the existing Floating Support Framework

The existing Floating Support Framework is led by Adult Services and within the Framework services for children and young people and their families are contained within Lot 3. There is an urgent need to understand why the

existing Floating Support Framework is not delivering the expected service dividends, meetings are planned in July 2021 with all existing providers in Lot 3 to understand the reasons for this which are believed to centre on the size and timing of packages requested and the inability to recruit staff.. The Framework is being reopened in September to new providers and a clearer understanding will be achieved by that time

d) Spot purchase

Whilst this could provide most flexibility it comes at the cost of additional expenditure, potential risk of supply to meet demand and least influence over the market. It also runs the risk of challenge as purchases are not in line with the Public Contract Regulations.

5. Risks

- 5.1 Failure by the Local Authority to provide appropriate Short Break provision may result in legal challenge and reputational damage for the Local Authority and increased emotional and financial costs as a result failing to support young people to live with their families. Mitigation to this will be via good market engagement prior to tendering to secure providers able to deliver quality provision in the new arrangements

6. Financial implications

- 6.1 Revenue funding of Short Break provision will be achieved within existing budget allocations. Families who are in receipt of Direct Payments will be approached to ask whether they wish to continue with their current arrangements or whether they wish the Council to commission on their behalf. It is hoped that by 'flexing' allocations between directly commissioned services and those bought by Direct Payments greater financial efficiencies will be achieved.

7. Climate change implications

- 7.1 Creating Short Break opportunities closer to children and young people's homes will reduce unnecessary travelling, thus supporting improvement in local climate quality.

8. Equality implications

- 8.1 Has an Equalities Impact Assessment (EIA) been completed?

Yes

- 8.2 The proposed tender and framework will enable disabled children and young people to experience a range of inclusive and exclusive activities allowing them to improve health, education and relationship outcomes that would not have been possible otherwise. This will contribute to the elimination of discrimination, advance equality of opportunity and promote good relations.

8.3 The proposed actions will support parents and carers to have a break from their caring role which will also contribute to the elimination of discrimination, advance equality of opportunity and promote good relations.

9. Data Protection Impact Assessment (DPIA) implications

9.1 Data Protection Impact Assessment is a legal requirement. Work with IMS will be undertaken and completed to identify any personal data risks, these will be addressed within the tender and Framework process.

10. Social value implications

10.1 Provision of Short Breaks will improve the quality of life for eligible children, young people and their parents/carers. Providers will be asked how they will increase Social Value as part of their tender submissions.

11. Consultation feedback

11.1 Feedback from the GPCF, current and putative providers all highlight the need to revisit the Short Breaks statement, to develop a Short Breaks strategy and tender effectively for appropriate services.

12. Officer recommendations

12.1 The Officer recommendations to Cabinet are;

- 1) To agree the proposed commissioning strategy and timeline.
- 2) Authorise the Executive Director of Children Services in consultation with the Cabinet Member for Children's Safeguarding and Early Years to:
 - a) Conduct a compliant competitive tender process for the development of a three-year contract with the option to extend for a further two years for directly provided Short Break services.
 - b) Determine whether to exercise the option to extend the contract for a further period of not more than two years on the expiry of the initial two year term.
 - c) Conduct a competitive procurement process in respect of a three year Framework Agreement for the supply of activity provision
 - d) Award such Framework Agreement to the preferred tenderer (s);
 - e) Procure and award Call-Off Contracts for the supply of activity provision under such Framework Agreement whose combined aggregate value shall not exceed £3m
 - f) The combined value of both the contracts and the Framework is estimated as £8.3m over the Five years for the delivery of Short Breaks services for children and young people with additional needs.
 - g) Upon conclusion of the competitive tender process, to enter into contract arrangements with preferred providers to develop a framework of approved providers.

13. Performance Management/Follow-up

- 13.1 Performance management metrics for tendered services will be co-produced with children, young people and their parents/carers who will be supported to take part in oversight meetings. In addition, new systems will be introduced allowing families to book services more easily providing choice and control over provision, a by-product will be enhanced data on providers including take and trends as well as gaps in provision.