

MEETING:	CABINET
MEETING DATE:	21 NOVEMBER 2013
TITLE OF REPORT:	Children with Disabilities: Short breaks and Respite service provision
REPORT BY:	Lead Commissioner (Short Breaks)

1. Classification

Open

2. Key Decision

This is a Key Decision because it is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; and

because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the County.

NOTICE has been served in accordance with Part 3, Section 9 (Publicity in connection with key decisions) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

3. Wards Affected

County-wide

4. Purpose

To seek approval to commit Council funding of up to £1.3m (£443k per annum) over the next three years in the procurement of services for children and young people with disabilities. This is part of a £3.3m (£1.1m per annum) pooled budget between Herefordshire Council and the Clinical Commissioning Group (CCG).

5. Recommendation(s)

THAT:

- (a) **funding commitment of up to £1.3m over three years be approved as the Council element of a total pooled budget of £3.3million over the next three year period to support the awarding of contracts for short break and respite care services for children and young people aged 0-19 years with significant disabilities in Herefordshire**

6. Alternative Options

- 6.1 It is the responsibility of the Local Authority to provide short breaks for carers of disabled children (Breaks for Carers of Disabled Children Regulations 2011). Contracts are coming to an end in January 2014 and must be replaced with new arrangements to ensure the availability of services. The Council and CCG have previously signalled the intent to review and re-commission short breaks provision to improve equality of access and choice, improve quality and ensure good value for money. A joint commissioning and tendering process is nearing completion, however, non-approval of the funding commitment would cause a delay or halt in the issuing of new service contracts and uncertainty for children and families and service providers.

7. Reasons for Recommendations

- 7.1 The purpose is to obtain approval of the council contribution of up to £1.3m over three years to a pooled budget of £1.1 million per annum; this resource will fund a range of commissioned services providing short breaks and respite care services for children & young people from January 2014. This is a jointly funded procurement between the Council and Herefordshire Clinical Commissioning Group.
- 7.2 The Local Authority and the Herefordshire Clinical Commissioning Group both have a statutory duty to support the needs of children with disabilities.
- 7.3 It is the responsibility of the Local Authority to ensure short breaks are available for carers of disabled children (Breaks for Carers of Disabled Children Regulations 2011).
- 7.4 The Children Act 1989 establishes the assessment duty and also requires the provision of certain specific services, particularly residential and foster care short breaks.
- 7.5 The Children Act 1989 creates a general duty on children's services authorities to safeguard and promote the welfare of children within their area who are 'in need'. The definition of 'children in need' is if:
- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority...; or
 - (b) his health or development is likely to be significantly impaired, or further impaired without the provision for him of such services; or
 - (c) he is disabled.
- 7.6 Members previously endorsed a joint commissioning approach with the then PCT to put in place a range of short breaks and respite services. The Herefordshire Clinical Commissioning Group has confirmed their commitment to this exercise and their funding contribution.

8. Key Considerations

- 8.1 This commissioning work contributes to the Council priorities to
- Keep children and young people safe and give them a great start in life
 - Enable residents to live safe, healthy and independent lives by
 - Encouraging individuals, communities and organisations do more for themselves and for their local area

- Radically reducing the costs, breadth and level of services we provide
 - Ensuring the services that we do provide are cost effective
- 8.2 For families of children with significant disabilities, regular short breaks are shown to improve the health and well-being of a family. They can prevent family crises or breakdown. They also build resilience and independence of a child with a disability and that of their siblings.
- 8.3 Providing short breaks for families is laid out in statute as a duty on the local authority. In Herefordshire the offer for children and families covering 0-19 years and provided across the county currently includes:
- Domiciliary care i.e. personal care in the home for the child e.g. bathing
 - Buddying and sessional support i.e. activities and care both within and away from home
 - Range of activities for children and young people e.g. boxing, playdays, youth clubs, school holiday clubs
 - Overnight respite within both 1 Ledbury Road or with agency carers
 - Support for families to manage direct payments
- 8.4 The Herefordshire Review of Services for Children and Young People with Disabilities and Complex Needs identified the availability of short breaks and respite care as a significant support to children, young people and families. A specific recommendation from the review was to commission an integrated range of short break provision and to pool resources across partner agencies to prevent overlap and support best value.
- 8.5 Short breaks services were originally commissioned through the Aiming High for Disabled Children initiative and contracts have been rolled over for a 3 year period. Procurement rules insist that public sector organisations regularly undertake re-procurement activities to ensure value for money is being achieved. Current contracts are due to cease in January 2014.
- 8.6 An analysis of numbers within Herefordshire show there are between 1,500 and 2,000 children at any one time with a range of disabilities. Within this the numbers of children currently accessing services by severity of their conditions are:
- Complex health and / or care needs – approx. 50 children and young people
 - Significant health and / or care needs – approx. 350-400 children and young people
 - Additional needs – approx. 1000 children and young people
- 8.7 The Commissioning Prospectus used in this procurement is a new approach in Herefordshire. It has been successfully used in other counties e.g. Birmingham, the Isle of Wight and more recently in East Sussex, Brighton and Hove. It promotes a collaborative approach with commissioners, providers and families coming together to determine how best to secure services that meet new and emerging needs and policies with a strong focus on outcomes.
- 8.8 The Commissioning Prospectus (appendix 1) offered organisations the opportunity to bid for approx. £1.1 million per annum of services to support disabled children, young people and their parent carers to access opportunities in community settings. The overarching outcome is that that disabled children, young people and their families are

able to live ordinary lives as far as possible.

- 8.9 The prospectus indicates the CCG and Council's commitment to implementation of personal budgets which in time will include social care, health and education funding as part of the development of Education, Health and Care plans within the new Children and Families Bill. Personalisation offers choice, control and flexibility to families in offering personal budgets so that they can organise their own support that meets their children's needs. Not all families will choose to have a personal budget so the Council is still likely to need to procure some services directly. For families to have this choice and control there needs to be a wide range of services and activities available in the county; the prospectus invited organisations to achieve this.
- 8.10 The Commissioning Prospectus places equal weight on:
- Its value for money/cost
 - The quality of the service provided
 - The social capital of the service
- 8.11 A critical goal is to ensure sustainable services within the financial resource available to the Council and CCG that reduces demand for higher cost services for children now, and for when they become adults.
- 8.12 Parents and carers have been, and will continue to be, involved in the commissioning process. This has included helping to choose the organisations that will deliver future services. To ensure that the new services deliver what is needed parents and carers will also be involved in the ongoing monitoring of the contracts.
- 8.13 The intention is to ensure the services
- Meet the outcomes developed by and with parents and carers
 - Give the coverage across the county so there is less travelling needed
 - Cover the full age range
 - Help meet existing needs and fill gaps identified by parents and through an analysis of the data, and do so for some areas by working directly with universal providers to enable the market, rather than directly commission services
- 8.14 The tender was advertised on the Proactis and Supply2Health portals on 16th July 2013. The tender deadline was 16th September 2013. Twenty six projects were received from fifteen organisations. The bids were analysed and a high level overview was shared at the parent panel on 20th September. Evaluation panels covering quality, cost and social value have scored the tenders to arrive at recommendations for preferred providers. Negotiations have commenced with those selected to enable contracts to be awarded and to be live for the beginning of January 2014. Final contract awards will be approved by the Director of Children's Wellbeing. These new contracts will:
- Bring some new providers into Herefordshire to offer a greater choice for families
 - Increase the number of buddies / support workers available to support children and young people and provide a break for their parents
 - Provide a new foster carer service which will allow families to have overnight or day respite from caring for their children, either in their own homes or in the carer's home

- Continue to fund existing activity clubs in the short term and provide support and advice to help them find alternative funding, so that their service remains open but is no longer reliant on public sector funding.

8.15 We are looking at awarding new contracts against each Lot as follows:

Service area	Contract amount (Council funding only)
Complex health care including overnight	£102,000
Buddying	£168,000
Activity clubs	£36,000

This does not allocate the full £443k budget. The table just shows new contracts that can be awarded as part of the procurement exercise. Further work will need to be undertaken to ensure there are sufficient services in place to meet the council's statutory duty; this is likely to be in the region of £70k. The balance of the £443k budget needs to provide for spot purchase of one off placements (approx. £67k).

- 8.16 Whilst this is a real positive change that families wanted, there is still more that needs to be done. Not all Lots have been successful and there will need to be negotiation with preferred providers to ensure certain services are still be provided. In addition the Council and CCG will undertake development work with providers in Herefordshire to ensure continued choice of activities and services are in place for more families.
- 8.17 Providers were asked to identify how they would become self-sustaining over a three year period through charging and other business models. Providers struggled with this, and it is clear that there are alternative funding sources which are not being accessed by providers to reduce the reliance on diminishing public sector funding. Advice is being provided to ensure providers rethink their business models and funding sources.
- 8.18 The number and quality of tenders received was generally disappointing. This means that there are certain services that will take longer to develop to provide the flexibility and choice that parents and carers have asked for, in particular overnight respite care.
- 8.19 The Council and CCG will work with providers to ensure there is a continued good quality service for those with the highest needs. Over the next year work will continue to re-design the short breaks offer for children and young people with the most complex needs; parents and carers will continue to be involved in the re-design process.
- 8.20 Having a broad base of services available for families that are not funded by the council means that both self-funders and those with a personal budget will have choice and flexibility of provision.

9. Community Impact

- 9.1 The short break and respite services and indeed the commissioning approach being taken is highly supportive to the local community. It is in line with the Council's priorities and budget plans for the next three years, with statutory provision, the priorities set out in Herefordshire's Yes We Can Plan and based on evaluation of current contracts, equality impact assessments and information from the Joint Strategic Needs Assessment and other local data. The services support the vision and many of the

individual principles of the Health and Well-Being Strategy, specifically:

- **Principle 1: personal responsibility** – to recognise, actively promote and support the contribution made by family, friends, the community and other services in helping people to achieve good health and wellbeing, with support from professional services when required.
- **Principle 3: sustainable services** - to provide a unified service for everyone, through consistently good quality shared care and managed networks. Services will be financially viable, safe and sustainable and affordable for everyone.
- **Principle 4: working together** - facilitate the provision of care as close to home as possible and ensure easy access to acute hospital services when needed. Services will protect people's safety, independence and dignity.
- **Principle 5: a lifecourse approach** - to work with people throughout their lives to improve their healthy life expectancy. A vital part of this is sustaining a healthy workforce for the county.

- 9.2 The services being procured will meet many of the Councils Corporate Plan priorities (see above) by efficiently and effectively using resources and engaging customers. The commissioning approach will also support all aspects of service and partnership; *continually looking for improvement, resources are linked to outcomes, openness and accountability and prevention and early intervention.*
- 9.3 The Herefordshire Review of Services for Disabled Children, Young People and their families focused on whether accessible comprehensive provision was available to meet the health and social care needs of children, young people. The methodology used for the review involved the production of a needs assessment of children with disabilities; an audit of the current services; discussions with children, young people, parents and carers, staff and organisations; and exploration of research and good practice. Stakeholder analysis was undertaken to identify all interested and influential parties to be engaged and consulted with during the review.
- 9.4 Workshops, paper questionnaires and an on-line survey were used to directly consult with parents, young people and service providers to establish a comprehensive understanding of the effectiveness of local services.
- 9.5 In determining the local needs assessment use was made of the Thomas Coram Research Unit review of Disabled Children, commissioned by the Department of Children, Schools and Families. This indicates that between 1010 and 1547 children and young people can be classified as disabled within Herefordshire. The assumption based on the local needs assessment is that the Herefordshire disabled child population is 3.0% -5.4% of total child population. Further detail is in paragraph 8.5.
- 9.6 The production of the Commissioning Prospectus has engaged parents and providers over many months. The outcomes within the prospectus are directly those chosen by parents as being the most important for them and their children and young people.
- 9.7 It also overtly recognises the unique position community and voluntary organisations occupy by evaluating bids against both the traditional domains of Cost and Quality but also Social Capital. This step is in line with the introduction of the Evaluate! Toolkit, the Bulmer Foundation social value measurement system which has been agreed as part of the Herefordshire Council commissioning model.
- 9.8 Throughout the commissioning process there has been an ongoing communication

strategy in place with service users and service providers. Change is difficult and can be particularly emphasised for many of our service users.

- 9.9 Any changes e.g. the end of a contract is assessed through equality impact assessments which consider the effect on service users and the provider. The results of these have been carefully considered alongside statutory requirements, priorities and the resources available.
- 9.10 Individual transition plans for children who have significant and complex needs are being put in place. These will be particularly relevant where a new provider is awarded the contract. For certain children this may mean a slower transition phase from one provider to another.
- 9.11 The approach taken with the prospectus is in line with the Council approach to encouraging local communities to become more self-reliant and for them to take on the challenge of running more services themselves. The Council's funding position means that this is now only one part of a bigger picture of the county's resources and assets that are available to support the most vulnerable members of society. Over the next year further service re-design work will be undertaken with the CCG both to develop the universal market and meet need where lots for contracts have not been awarded through this procurement process. This will ensure that there is a continued choice of activities and opportunities available for more families whether that is through self-funding, personal budgets or directly commissioned services.

10. Equality and Human Rights

- 10.1 This procurement activity does pay due regard to our public sector equality duty by ensuring that children with disabilities and their families are able to lead as far as possible normal family lives by accessing support and opportunities. Research shows that families with a disabled child often have greater emotional and financial strains than other families with able bodied children.

Note: Under Section 149, the "General Duty" on public authorities is set out thus:

"A public authority must, in the exercise of its functions, have due regard to the need to –

- eliminate discrimination, harassment, victimisation and any other conduct ... prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it."

An Equality Analysis has been undertaken along with individual providers Equality Impact Assessments which will be reviewed when individual providers have been selected to consider the impact on existing services and potential new services.

The Analysis identifies three groups of children that could be affected through this process.

- Children and young people with complex and significant health and care needs
- Children and young people accessing short breaks and respite services
- Children and young people with an additional need (disability)

These first two groups are those that the council and CCG have a statutory duty to support. The procurement process and any subsequent action must ensure that these families receive the support they are assessed as requiring.

The third group are those children that are not assessed as needing statutory support and are therefore reliant on the universal market for support. The market in Herefordshire is under-developed and will require support from the council to ensure there is significant supply and breadth of services to enable choice for families. Activity clubs that are currently contracted with the council will be provided with short term funding to enable them to review their business model and look for other sustainable funding sources. These types of activities need to be maintained but can no longer be funded by council and CCG funding.

11. Financial Implications

11.1 The total pooled budget available within the tender is £1,100,000 per annum. This is allocated approximately as follows:

- £600,000 which will be used to provide services for children and young people with complex health and/or care needs;
- £200,000 which will be used to provide services for referred children and young people with significant health and/or care needs;
- £200,000 which will be used to provide services for self-referred children and young people with significant health and/or care needs, and
- £100,000 which will be used to provide services for children and young people with additional needs.

11.2 These budget allocations are indicative and transferrable allowing flexibility in their allocation whilst retaining the relative amounts within each of the categories above. This means that, should an innovative project be suggested by a provider which includes aspects of provision against a number of the need areas described above, the money can be utilised flexibly to respond to this.

11.3 Some funding will be retained to enable the spot purchase of services for a small number of children whose needs will not be met through the commissioned services. These can be very costly packages of care. The Council will need to provide personal budgets for families that choose this and this flexibility will enable this to happen. Personalisation has also been included within the prospectus to allow changes in provider's contracts. As part of the implementation a co-ordination post will be recruited to ensure families are matched and supported with the most appropriate package of care; they will provide the valuable link between families, commissioners and providers and ensure the quality of services provided.

11.4 Significant savings have already been built into the funding available for this commissioning exercise. The amount being committed by the Council next year and the following two years equals a 46% reduction from 2011/12 budgets.

11.5 Providers, through the tendering process, were expected to submit offers which have accounted for a market rate profit level; this means that the financial settlement should be sustainable. Value for money is a key element of the evaluation stage scoring. All providers were asked to include parents making a financial contribution to their activities/services whilst considering equality of access for those who cannot afford to

pay. Providers were also asked to consider other funding sources and to seek to be self-sufficient after the 3 years of council funding. Through the evaluation and negotiation stages of the tender there was a strong emphasis on the statutory obligations on the Council and CCG and how those can be provided most cost effectively; if further savings can be secured they will be shared as appropriate across both the Council and CCG.

12. Legal Implications

- 12.1 Under the Children and Young Person Act 2008 the Local Authority must offer short breaks as part of a preventative model. The responsibility of the local authority to provide short breaks for carers of disabled children came into effect on 1st April 2011 (Breaks for Carers of Disabled Children Regulations 2011). These place a duty on local authorities to have regard to the needs of carers who;
- would be unable to continue to care for their disabled child without a short break or would be able to care more effectively if breaks are given,
 - to look after other children of the family more effectively
 - or to take part in training education or leisure activities
 - or to carry out day to day tasks in running the household
- 12.2 The services being tendered for are classified as Part B services under the Public Contracts Regulations 2006. Thus they are not subject to the full EC procurement regime with its various tightly regulated procedures. Nonetheless the authority has a duty to conform to the wider EC principles of equal treatment, non discrimination and transparency. This duty can be satisfied by following the authority's own contract procedure rules which contain suitable provisions relating to advertising, tendering, evaluation and award.
- 12.3 The Commissioning Prospectus approach, whilst innovative in developing services with providers and service users will result in formal contracts with providers as laid out in the Councils Procurement Rules. The Procurement team within the Council are advising commissioning staff to ensure all current procurement rules are followed in this exercise. The Procurement team will lead on the formal procurement stages where expressions of interest and final bids are submitted.
- 12.4 The section 75 agreement between the Herefordshire Clinical Commissioning Group and the Council includes the arrangement of a pooled budget for short breaks and respite services with the Council acting as lead commissioner and pooled budget manager. The section 75 schedule commits partners to confirm funding for the 3 years of the contracts awarded with the provision that a minimum 6 months notice must be given by either organisation for any reduction in funding. This is to allow sufficient notice to be given to service providers to reduce or cease services.
- 12.5 The Children and Families Bill, currently in Parliament, will bring radical changes to the special educational needs (SEN) framework, subject to Royal Assent. The Department for Education are currently consulting on a draft new 0-25 SEN Code of Practice which will become statutory guidance. The Bill proposes a range of measures and would place legal duties on local authorities, early education providers, schools, colleges, health bodies and those who work with them for identifying children and young people with SEN, assessing their needs and providing support to them and their families. In particular it will replace SEN statements (for schools) and Learning Difficulty Assessments (for young people in further education and training) with single 0-25 Education, Health and Care Plans and give families and young people the right to a

personal budget.

13. Risk Management

13.1 The risk associated with the lack of appropriate bids has been recorded within the Children's Wellbeing Directorate risk log (RSK.CCS.004). Ongoing communication with service providers through meet the buyer events have been held throughout the process. If there is an insufficient range of services then negotiations will take place with selected providers to increase coverage where possible. Further tendering of individual "lots" may have to take place where there are no winning bids.

13.2 There is risk predominantly related to adverse publicity and the Council's reputation if there is a delay or the recommendation of this report is not agreed. Expectations have been raised with service users and providers; relationships with these stakeholders have improved from a very low base. There is also a statutory duty on the LA to provide short breaks for carers.

There are also risks from a small number of stakeholders with a preference for maintaining the status quo. This is being managed through ongoing communication and engagement to enable a common understanding of the facts emphasising the positive contribution this project will make to:

- a. maintaining service levels in an environment where budgets are reducing whilst increasing opportunities for service user choice and control of how services are provided
- b. securing more consistent standards of care across the County
- c. supporting what families want evidenced by the amount of engagement and positivity that families are now vocalising over the council's approach to this activity.
- d. Developing business opportunities for providers and drawing other funding into this area of work.

13.3 Risk exists if the Council does not adequately execute its implementation plan. This may result in dissatisfaction and undue anxiety amongst service users. Implementation will be phased and is closely linked with service user reviews to allow staff to assist with any changes.

13.4 If the decision is challenged at any point this will add a delay to awarding any new contract. In this case the current providers would be approached to extend services for a further limited period to allow time to respond to any challenge and for the new contract to be negotiated. Providers are already in discussion as to transition and hand over arrangements. Extending contracts would require a waiver to be agreed by the Director, legal and procurement services.

13.5 If the proposals are declined, the current arrangements will come to an end which will result in the cessation of these vital services. This would be in direct contravention of the duty of the local authority and would expose the Council to legal challenge from service users.

13.6 Contracts that are awarded will request certain flexibilities to change or vary services if required within the term of the contract. This includes confirmation of funding on an annual basis. With the ongoing pressure on budgets there may be the need to reduce, change or even de-commission these services before the end of the formal contract period. The Council standard contract and Compact allows this to happen provided

sufficient notice is given to the provider and Equality Impact Assessments are undertaken.

- 13.7 Similarly there is a risk that the CCG financial stability will be under pressure over the three year period of these contracts. The section 75 agreement between the CCG and Council insists on a 6 month notice period of any changes in the level of funding by either party so that if necessary due notice can also be given to providers in any change in funding levels through their contracts.

14. Consultees

- 14.1 A wide range of stakeholders (staff, service users, providers) were consulted as part of the original review of services for disabled children and young people in 2010/2011. This review resulted in the recommendation for a continuum of short breaks and respite services to be commissioned jointly by health and local authority.
- 14.2 Ongoing consultation and engagement as to the re-commissioning of services has occurred with parents / carers, through Herefordshire Carers Support Parent / Carer Forum and with some Special Schools and this will continue. A joint parent and provider event was facilitated to ensure providers heard directly what parents and families need.
- 14.3 Engagement with providers is also ongoing through Herefordshire Voluntary Organisations Support Service (HVOSS) and the Council's own Provider Forum. A series of workshops have been held with parents, carers, current and potential providers to shape the outcomes and related objectives. HVOSS are working with their member and affiliated organisations on this collaborative approach to service development.
- 14.4 The Children with Disabilities Steering Group is a multi-agency group put in place to ensure the recommendations of the 2010 review were actioned. They have also been engaged with informing the details within the prospectus.

15. Appendices

- 15.1 Appendix 1 – Commissioning Prospectus

16. Background Papers

None