

<b>Meeting:</b>	<b>Cabinet</b>
<b>Meeting date:</b>	<b>21 January 2016</b>
<b>Title of report:</b>	<b>Provision of short breaks and respite care services for children with disabilities</b>
<b>Report by:</b>	<b>Director for children's wellbeing</b>

## **Classification**

Open

## **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.

Notice has been served in accordance with Part 3, Section 10 (General Exception) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

## **Wards Affected**

Countywide

## **Purpose**

To:

- provide the executive response to the report from the health and social care overview and scrutiny's task and finish group report on 'Short breaks and respite services for children with disabilities'; and
- to approve in principle the proposals in relation to the provision of short breaks and overnight respite care.

## **Recommendation(s)**

**THAT:**

- a) **the executive's response to health and social care overview and scrutiny committee's recommendations regarding the provision of short breaks and respite services for children with disabilities, as attached at appendix 2 to this report is approved;**

- b) the council takes on the role of lead commissioner on behalf of the council and Herefordshire Clinical Commissioning Group (CCG) and awards a contract to Wye Valley NHS Trust at 1 Ledbury Road, with effect from 1 April 2016;**
- c) authority be delegated to the director of children's wellbeing, following consultation with the director of resources and cabinet member young people and children's wellbeing, and subject to the outcome of consultation and ongoing funding from the CCG; to conclude contract negotiations within the financial envelope as set out in this report and enter into a contract with Wye Valley NHS Trust, to ensure the continued availability of overnight short breaks at 1 Ledbury Road for up to 12 months, through an alternative delivery model;**
- d) the council budget for 2016/17 for short break services is , subject to Council approval, increased by £600k to cover the transitional cost; and**
- e) by virtue of this decision, an exemption to paragraph 4.6.13.2 of the council's contract procedure rules be granted to enable the direct award of a contract for the services provided at 1 Ledbury Road for the reasons set out in paragraph 10 and 22 .**

## **Alternative options**

- 1 Some of the assessed overnight respite care needs of children currently using 1 Ledbury Road, cannot be met locally other than through direct payments, with parents and young people choosing to meet need in different ways. The council could opt to meet need through direct payments; however, this currently is under-developed and could put the council at risk of not meeting its statutory duties.
- 2 Purchase overnight provision from other providers operating outside of Herefordshire. Whilst there is some provision in other counties and this is made use of by some families, it is not considered appropriate to use provision at a significant distance from the family home in Herefordshire. The nature of short breaks provision is that it can be regular and easily accessible or is provided in such a way, for example as blocks of , that is practical for the children and families. This can be provided by some provision in other counties, but not if it is too far away to be of practical use.
- 3 An alternate medium term option is to maintain the facility at 1 Ledbury Road as it currently stands. However, this is a relatively high cost provision due to the health model of support which is not required to meet the whole range of assessed respite care needs in the families concerned. It is considered that this would represent a disproportionately large expense having regard to the provision generally in the county of children's services. This option is not recommended.
- 4 To enable another provider to take over the operation of 1 Ledbury Road and to develop an alternative service model. This option will be explored with the cooperation of the current provider, Wye Valley NHS Trust; however at this point in time no alternative provider has been identified; families and staff require some degree of assurance that their needs will be met in the short to medium term. Consequently, for the time being at least, this option is not recommended.
- 5 For the council to take over the management and direct delivery of the provision from Wye Valley NHS Trust. The council has no current expertise in directly running a facility such as this. It currently commissions all its residential and short break provision. This option, if agreed by Wye Valley NHS Trust, would transfer responsibility for staff and buildings to the council. This could bring significant practical and financial challenges in

terms of the state of the facility. Redundancy costs should the service be closed would also have to be borne as TUPE would apply. The costs could be prohibitively high and difficult to predict. In addition this course of action may set a precedent should other commissioned facilities such as privately managed care homes, cease to trade. This option is not recommended.

## **Reasons for recommendations**

- 6 To provide a response to the recommendations from the health and social care overview and scrutiny committee.
- 7 To secure the availability of the facility at 1 Ledbury Road for up to 12 months to meet the assessed respite care needs of some children currently accessing 1 Ledbury Road, pending availability of suitable alternative support and to help fulfil the council's statutory duty.

## **Key considerations**

### **Scrutiny Report**

- 8 The health and social care overview and scrutiny committee met on 12 December 2015 and considered the task and finish group report on short breaks and respite services for children with disabilities. The report of the task and finish group is attached at appendix 1.
- 9 The committee agreed a number of recommendations; these are contained in appendix 2 along with the proposed responses; where actions have already been progressed an update is also included.

### **Short breaks respite provision in the short term**

- 10 The council is acting with partners to put in place overnight respite provision that will meet the needs of some families currently using 1 Ledbury Rd short breaks facilities. It is regrettable that for some families the work to put in place a range of short breaks has proved to be difficult, raised anxiety and created challenges for them.
- 11 In 2013 the council, in partnership with the CCG, undertook a recommissioning of short breaks services to secure a range of support to meet family needs and fulfil statutory duties. One of the options put out to tender was to recommission residential short breaks, but a contract was not awarded.
- 12 Wye Valley NHS Trust (WVT) continued to provide residential respite care at 1 Ledbury Road despite not winning a new contract. This was done to ensure continuity of provision for families using the service, pending alternative solutions being found. A number of families have relied on 1 Ledbury Rd to provide valuable short break respite.
- 13 1 Ledbury Road is operated by Wye Valley NHS Trust (WVT) and is currently commissioned by the CCG with the council providing funding for a small amount of top up provision. This is an anomalous historic situation as the statutory duty to provide short breaks primarily sits with the council, with the Clinical Commissioning Group responsible for meeting assessed medical needs. However, both bodies have access to the Better Care Fund which is administered under the provisions of a Framework Partnership Agreement made between the council and the CCG under which the CCG may perform certain "health-related functions" of the council (which include short break

provision for children in need). In addition, the facility is classed as a hospital ward although, according to the CCG, not all of the children meet continuing health care criteria.

- 14 1 Ledbury Road consisted of three units, which at the start of this financial year was supporting 40 children who had a variety of day and night time support. During this year the numbers have reduced as the young people have moved to adult services, or have their needs met in other ways.
- 15 There are currently 25 children making use of the provision. Other local providers include Acorns and Martha Trust. There is a gap in the local market to provide alternative residential respite, particularly for a small number of children with autism and challenging behaviour. At present, the council is planning for 15 children to require this provision from April 2016. This figure may change as the local market develops and options such as direct payments are taken up by families.
- 16 In recent discussions with the current service provider (WVT) they have indicated that they would be prepared to continue to operate the service at the current level (six beds), or at a three beds basis. They have further confirmed that they would be prepared to explore the possibility of securing the re-designation of 1 Ledbury Road from “hospital” to “respite centre/short breaks facility” to facilitate, alongside other initiatives, the recruitment of appropriately qualified staff. They have provided a range of financial cost projections which are outlined in the financial implications section below. They have indicated that in order for this to be secured they would need a contract with a minimum length of 12 months (from April 2016) and ideally 18 months.
- 17 During this financial year, Wye Valley NHS Trust has struggled to maintain a consistent level of staffing and has had to reduce services. It is agreed by Wye Valley NHS Trust, the CCG and the council that in view of the current gap in the market, a practical solution pending longer term developments, is for the council to become the lead commissioner on behalf of itself and the CCG, to commission a facility at 1 Ledbury Road for up to a further 12 months, subject to the ongoing financial contribution of the CCG.
- 18 The new contract would not be a replica of the service at 1 Ledbury Road as it was. It would be for a social care focused model, supporting up to 15 children and young people. The council and partners have recognised that this would be more appropriate to meet child and family needs. It is also important that the service is more resilient than the current arrangements, including the provision of high quality staffing to provide a safe and effective service. This would in part be contingent on the Wye Valley NHS Trust changing the registration to an Ofsted model and the ongoing availability of funding from the CCG as set out in the financial section below.
- 19 The final decision whether to award the contract or not will take place as soon as possible following the close of the consultation period and completed impact assessment. Cabinet will be updated accordingly.
- 20 In order to reduce any potential delay, negotiations have also begun in principle with Wye Valley NHS Trust on the nature of the contract, on a without prejudice basis.

### **Short breaks respite provision in the longer term**

- 21 It is recognised that the majority of respite needs fall within the statutory duties of the local council. There may be some health needs which should be met through local services or through continuing healthcare and healthcare assessments are due to be

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completed to determine this.

- 22 Assessed needs can be met in a variety of different ways, and the council's aim is to have a range of provision available. There are a number of children currently using 1 Ledbury Road whose needs could be met through the range of short breaks already available, and some that could access overnight short break provision in a family setting.
- 23 Having tested the market and found that there were currently no private providers available to meet some of the needs identified, the council's fostering service is currently developing and enhancing the in-house fostering service to provide overnight short breaks in a family setting. Current indications are that by July 2016 four carers should be in place to offer this service. When fully operational by March 2017, six carers should be in place, providing approximately 1,200 nights of support per annum. This would support between 12 and 18 children depending on assessed need.
- 24 Domiciliary care support is used at present in limited circumstances, but there are opportunities to develop this aspect of the market so that parents can receive respite care in their own homes, either commissioned by the local council on their behalf, or commissioned by themselves if they have chosen to have a direct payment. This market is in its infancy and requires development and market testing with the local provider market.
- 25 Direct payments are also a provision the council is keen to develop. Some parents in the county are interested in developing local commissioning arrangements using direct payments and other parents are considering imaginative use of funding to meet assessed need.
- 26 Notwithstanding the developments set out above, assessed needs indicate that there continues to be a need to commission residential respite services. A local provider which currently operates in the adult learning disability market has expressed an interest in developing a separate small respite facility for young people as part of its development plans. This could offer a modern purpose built alternative to 1 Ledbury Road in the medium term. Discussions are at a very early stage but will be explored further to assess viability, timescales and financial implications.
- 27 A charity associated with the current facility has also expressed an interest in taking on and developing the service as a self-sustaining facility. Discussions are again at a very early stage but will be explored further to assess viability, timescales, potential longer term risks and financial implications as well as the potential for linking with the proposal mentioned in paragraph 25 above.
- 28 Any changes in the long term provision of overnight respite care at 1 Ledbury Road will require consultation and engagement with users, parents and partner organisations, and equality impact assessment.
- 29 Historically some children have received a level of support which is in excess of their assessed needs, and there is a parental expectation that this should be maintained. A higher level of support than required is not necessarily in the best interests of the development of the child as it creates a level of dependency which will not be sustainable when the young person transitions into adulthood. There will be a comprehensive transition assessment and plan in place as a young person moves into adulthood to ensure that there are no gaps in service. There will also be a greater focus on meeting outcomes which promote independence and in turn, reduce long term care and support.

## Community impact

- 30 Herefordshire's Children and Young People's Plan 2015 – 2018 has been agreed by the CCG and Herefordshire Council as well as other partners. It contains the collective goal to enable all children and young people in Herefordshire to have the best start in life, grow up healthy, happy and safe within supportive family environments. Specifically for children with disabilities one of the aims is to enhance local support for families, including family based respite services by retaining budgets and reinvesting resources. The work contained in these recommendations enables the council and the clinical commissioning group to support children with disabilities and their families through local provision whilst also continuing to develop a breadth of short breaks provision.
- 31 Work undertaken with families has evidenced the need to have a range of short breaks provision, including overnight respite. Short breaks play an important part in enabling some families with children with disabilities to enjoy and maintain a family life. Some families have been very clear that they value 1 Ledbury Road, whilst others have welcomed the option to make use of a variety of other short breaks. The work with families has identified that there are gaps in the market which will be addressed through further work, including the promotion of personal budgets and work with potential providers to establish local services in Herefordshire.

## Equality duty

- 32 As the provision of short breaks and overnight respite services continue to be developed over the next 12 months, the council will pay due regard to our public sector equality duty under Section 149, General Duty whereby:

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."

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take 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;
- (c) encourage 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. "Protected characteristic" includes disability and all the child and young persons accessing 1 Ledbury Road are likely to fall within this definition.

## Financial implications

- 33 The overall spend on short breaks provision by the council is £1m in 2015/16. This includes a range of short breaks and also the current council spend on independent providers and 1 Ledbury Rd. In 2015/16 the CCG provided approximately £880k to fund the facility at 1 Ledbury Road. There has also been a £60k contribution from the council's children's services, included in the above figure.
- 34 For 2016/17 the CCG has confirmed (subject to the decision of its governing body) that it will continue to invest the £427K of the carers grant within the better care fund to support service provision but will withdraw its remaining short breaks funding as part of its budget reductions. The council has identified ongoing budgets of £180k to fund a range of respite provision, including family based overnight foster care.
- 35 Wye Valley NHS Trust has proposed a series of costings to maintain the service, ranging from a minimum of £540k (three beds) to £775k (to maintain six beds). The trust has indicated it would take until July 2016 for the three bed model at £540k to be available.
- 36 This cost will leave a one-off funding gap of £600k in 2016/17. This funding has been included in the Cabinet's budget proposals for 2016/17. This sum will support a range of short breaks to enable the council to meet its statutory duties and to enable transition to other service arrangements.

## Legal implications

- 37 The primary duty to provide short breaks is set out paragraph 6 of Schedule 2 to the Children Act 1989. Paragraph 6 is contained in Part 1 of the schedule and accordingly relates to the local authority's duties under section 17(1) of the Act in relation to children "in need". Under section 17(10) a "disabled" child falls within that description. Section 17(1) describes a "general duty" of every local authority to "(a) to safeguard and promote the welfare of children within their area who are in need; and (b) so far as is consistent with that duty, to promote the upbringing of such children by their families", and the manner in which this is achieved, namely by "providing a range and level of services appropriate to those children's needs." Other relevant duties are contained in section 11 of the Children Act 2004.
- 38 As detailed within the report, the proposal is designed to meet the above mentioned duties in light of identified need. A failure to provide such services would be unlawful and a breach of statutory duty.
- 39 The Care Act 2014 and the Children and Families Act 2014 creates a new legal framework which has an emphasis on personalisation and outcomes. It builds a degree of flexibility so that personalised approaches to care can be developed and embedded between the ages of 14-25. The framework also ensures that there is continuity of care as children transition into adulthood so that there are no gaps in service at age 18. The Care Act 2014 specifically places a duty on the local authority to conduct a transition assessment for a young person or carer, in order to help them plan, if they are likely to have needs once they (or the child they care for) turn 18.
- 40 The recommendations put forward within this report are to be the subject of public consultation which accords with the Council's general duty to act fairly in the exercise of its functions. The nature and impact of the decision on those who use the services provided at 1 Ledbury Road also supports the requirement of consultation. The Council

has a broad discretion as to how a consultation exercise should be carried out, and in this case, the length of the consultation (approximately 6 weeks), will allow enough time for steps to be taken to implement the recommendations should that be the decision taken following consultation”.

## **Risk management**

- 41 If there is no local residential provision then the council may not be able to meet some of the assessed needs of some of the children currently using 1 Ledbury Road and their families in terms of offering short breaks locally. At the very least other means of meeting needs would have to be sourced and there are no local providers currently identified for a number of children. This situation will be mitigated through the revised service offer that will be provided by 1 Ledbury Road.

## **Consultees**

- 42 The recommendations of the scrutiny committee were informed by the views of some parents and stakeholders as detailed in the report.
- 43 The development of short breaks provision in Herefordshire has been carried out in consultation with groups of parents over a number of years and continues to be informed by parent views.
- 44 As the council is proposing a change in provision at 1 Ledbury Road from the current arrangements, these proposals are required to be consulted upon with the families that are both actually and potentially affected. In the interests of openness and fairness, the consultation will be conducted with those families currently assessed as eligible for short breaks regardless of their eligibility to use 1 Ledbury Road.
- 45 Due to the tight timescales involved, as Wye Valley NHS Trust currently have no contract past the 31 March 2016, the consultation commenced in the week of 11 January 2016 and will conclude on the 19 February 2016. It began with a letter being sent to each family inviting their views and enclosing a consultation document. In addition the consultation comprises of publication of proposals and meetings with families. Mechanisms are in place in the form of a dedicated email address for views to be sent to.

## **Appendices**

Appendix 1 – Task and finish group report on the ‘Provision of short breaks and respite services for children with disabilities’.

Appendix 2 – Summary of recommendations from the task and finish group, Health and Social Care Overview and Scrutiny Committee and executive responses: Provision of short breaks and respite services for children with disabilities.

## **Background papers**

None identified.



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