

## **Title of report:**

# **Tier 3 Short Breaks contract extension by variation**

**Decision maker: Cabinet member children and families**

**Decision date: 16 March 2022**

**Report by: Children's Commissioning Manager**

### **Classification**

Open

### **Decision type**

Non-key

### **Wards affected**

All (All Wards);

### **Purpose**

To vary, by a 12-month extension, the existing Short Breaks Dynamic Purchasing System and associated provider contracts.

The cost of support provided through the contracts will depend on the assessed needs of individual children and families and will be met from the council's short breaks budget.

The council provides a range of short breaks for disabled children and their carers and has operated a Dynamic Purchasing System since 2017. The Dynamic Purchasing System has allowed new providers to become approved contractors during the period since 2017. Work will be completed during the proposed extension period to redesign the council's short breaks offer to secure improved provision from April 2023.

### **Recommendation(s)**

**That:**

- (a) the Dynamic Purchasing System and current short breaks contracts are extended by variation from 1 April 2022 to 31 March 2023 at an estimated combined cost of £420k**
- (b) any new providers that may wish to offer new capacity for short breaks services are enabled to apply for approval to join the Dynamic Purchasing System during 2022/23**

**(c) the planned work to recommission the council's short breaks offer for 2023 onwards, as outlined by paragraphs 12-14, 21 and 29 of this report, is noted.**

## **Alternative options**

1. Allow the Dynamic Purchasing System and existing provider contracts to end on 31 March 2022. This is not recommended as it may lead to a break in service for vulnerable children and families. Where existing packages of support for individual children and young people need to continue into 2022/23, new spot-purchase contract arrangements would be required which would create additional administrative pressure on the council and providers that could divert attention from meeting the operational needs of vulnerable children and their families and the strategic redesign of the short breaks offer.

## **Key considerations**

2. Paragraph 6 (1) (c) of Schedule 2 of the Children Act 1989, as amended by the Children and Young Persons Act 2008, requires Local Authorities to provide services designed to give breaks for carers of disabled children.
3. Short breaks is the term used for a range of services for families to give carers of disabled children a break from caring and for children to take part in fun activities and have new experiences away from home. Short breaks provide opportunities for disabled children and young people to have enjoyable experiences away from their primary carers, thus contributing to their social inclusion and personal and social development. They also provide the parents and carers of disabled children with a necessary and valuable break from their caring responsibilities.
4. Short breaks can include a wide variety of services from universal opportunities (open to all without the need for any assessment or specialist support) through to funded specialist services (where an assessment is required). Short breaks can include day, evening, overnight, weekend or holiday activities. They can take place in the community, in the child's own home, in the home of an approved carer or in a residential setting.
5. In Herefordshire, there are three tiers of short break provision:

### **Tier 1 - Universal:**

Mainstream community services that are accessible without an assessment such as youth clubs, uniformed groups (i.e. cubs, brownies), leisure centres, nurseries, childminders and activity-based groups

### **Tier 2 - Targeted:**

Daytime activities or funding designed specifically for disabled children that can be accessed without a social care assessment.

### **Tier 3 - Specialist:**

Specialist short break services can be provided to meet a specific need following a social care assessment of the child's and carer's needs. Depending on the outcome of the assessment, needs may be met through a range of services, including:

- i. direct payments that families can use to employ a personal assistant or fund other non-commissioned activities
- ii. commissioned specialist daytime buddying (1-1 or 2-1 support in the community)
- iii. commissioned domiciliary care
- iv. family-based overnight short breaks (in-house foster care)

v. commissioned residential-based overnight short breaks

6. The Dynamic Purchasing System covers Tier 3 commissioned services and currently has three approved providers (Our Place Schools, Newcross Healthcare Solutions Limited, and Aspire Living), which between them provide a range of specialist daytime buddying services, domiciliary care services, and overnight support in the home.
7. The number of children requiring Tier 3 daytime support normally averages around 25-30, who are aged 8–17yrs and have varying needs including physical, behavioural and health needs at different levels of complexity. Children and young people requiring commissioned Tier 3 services are located in all parts of the county. The services required may vary between community based support and care in the home, therefore CQC or Ofsted registration requirements vary dependent on the type of support delivered.
8. Since the implementation of the Dynamic Purchasing System in 2017, securing appropriate, quality Tier 3 daytime support has been a continual challenge. Primarily, this has been because of the relatively small number of children requiring such varied amounts and types of support, which make it difficult to sustain a buoyant provider market. For example, Crossroads Care exited the Dynamic Purchasing System in 2020 citing the challenges of delivering this type of provision in Herefordshire, including recruitment challenges, and the geographical spread of children needing support alongside relatively small levels of demand for buddying provision. Following intensive engagement by commissioners with appropriately registered providers in Herefordshire and neighbouring counties, Newcross Healthcare Solutions Ltd was approved during 2020, however the challenges with recruitment, rurality and demand levels have remained.
9. The overwhelming majority of short breaks packages have continued during the pandemic, but there has been increasing difficulty in sourcing support during 2021, which has impacted on planned strategic work to redesign the short breaks offer. Existing packages of support have been impacted by staff availability resulting from sickness absence and recruitment and retention issues, which has led to some support being unfulfilled. The situation further intensified at the start of the 2021 summer holidays, when Newcross Healthcare Solutions Ltd ceased providing half of its packages (15 children) due to chronic staffing shortages and recruitment difficulties. The council worked closely with the provider which has since stabilised and continues to support 12 children including some complex packages.
10. Significant work has been undertaken by commissioners to source alternative provision in order to meet need. Over thirty potential providers have been approached but have been unable to consider delivery in Herefordshire due to issues with staffing shortages, prohibitive levels of travel required, or lack of appropriate skills/ training or registration requirements. However, one new provider (Our Place) has recently joined the Dynamic Purchasing System and is now supporting 8 children, with plans to scale up delivery in the medium term.
11. At the same time that there have been market capacity challenges, there have also been increased referrals for daytime support, as well as a small number of substantial and ongoing packages that have been required to prevent family crisis. Twenty referrals for daytime support were received during 2020/21 compared to an average of eight per year in the preceding two years. The average package size in 2020/21 was five hours per week for those requiring 1:1 support and 8.5 hours per week for those requiring 2:1 support. However, since the beginning of 2021 there have been a small number of cases requiring up to 168 hours per week of intensive 2:1 support over extended periods in order to prevent crisis. The council's short breaks programme was not originally designed to provide this level of support, and along with market pressures of staff recruitment and retention, it has meant increased pressure on the available capacity for other children,

- with some parents citing concerns about the consistency and reliability of staff and long wait times for new referrals
12. Work has commenced to inform the future redesign and recommissioning of the shortbreaks offer. The work to-date has included engagement with children, families and service providers (see Consultation section below). Initial consideration has been given to the potential options (below) for addressing the known Tier 3 service pressures:
- |                               |  |
|-------------------------------|--|
| Tier 3 daytime short breaks   | <ul style="list-style-type: none"> <li>i. Direct Purchasing System renewal</li> <li>ii. Block contracting</li> <li>iii. Cost and Volume contracting</li> <li>iv. Develop in-house provision</li> </ul>   |
| Tier 3 Overnight short breaks | <ul style="list-style-type: none"> <li>i. Expansion of in-house (fostering) sleep-over scheme</li> <li>ii. Direct Purchasing System renewal for residential care</li> <li>iii. Block contract residential beds in existing settings</li> <li>iv. Develop small local residential provision through block contract or alternative</li> <li>v. Develop in-house residential provision</li> </ul> |
13. Progressing these options to a decision has been adversely impacted by the pressing day-to-day need to ensure the continued provision of existing support to children and families at a time when providers were withdrawing from the market or experiencing significant staffing difficulties. It is therefore necessary to extend the existing contract to avoid a potential break in service and to complete the strategic redesign and recommissioning of the offer through the council's governance processes during 2022/23. An appropriate exemption for the council's contract procedure rules has been approved by legal, commercial and finance departments, and the Corporate Director for Children and Young People.
14. During the extension period, it is intended that more detailed work can be undertaken to engage with key stakeholders to explore the options described above and inform appropriate service redesign and commissioning intentions. Subject to further governance, any procurement activity that may be necessary could be expected to take place throughout the autumn of 2022 to ensure that new contracts are in place for April 2023. To help facilitate further progress, additional Commissioning Officer capacity has been appointed to support the immediate day-to-day management of short breaks packages for individual children and families, which will enable the Lead Commissioner to focus more on the remaining strategic work. In addition, the potential for corporate project management support is being explored, however competing priorities and staff turnover or absence may further impact on planned progress.

## Community impact

15. These proposals support the principles outlined in the council's corporate plan, the Health and Wellbeing Strategy and the new Children and Young People's Plan. It will support delivery of key pledges made in the Children and Young People's Plan such as 'Be Healthy' and 'Be part of the Community' by encouraging inclusion, equality of opportunity and supporting health and wellbeing.

## Environmental Impact

16. Short breaks contracts require providers to maintain an appropriate environmental policy to help ensure that procedures and practice is compatible with the council's expectations.

## Equality duty

17. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

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

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
18. The services provided through the council's short breaks offer support to a specific cohort of children and young people with protected characteristics, and their families. Non-extension of the current arrangements could lead to a break in service for some children and families, potentially with a significant impact on their lives. The wider short-breaks offer will be reviewed during the proposed extension period, which will be informed by an equality impact assessment to ensure that any updated offer can provide appropriate support to disabled children and their families.

## Resource implications

19. The annual spend through the dynamic purchasing system over its lifetime has been:

| Financial year | DPS total            |
|----------------|----------------------|
| 17/18          | £190,041.76          |
| 18/19          | £150,096.47          |
| 19/20          | £112,715.53          |
| 20/21          | £284,741.76          |
| 21/22          | £440,169.24          |
| <b>Total</b>   | <b>£1,177,764.76</b> |

20. It is estimated that over 15,000 hours of Tier 3 support may be required for 25-30 children and young people in 2022/23, at a cost of c.£420,000. The actual requirements will be driven by the number of children assessed as needing a Tier 3 short break service and the amount and type of service each child requires to meet their needs. The estimated costs of this provision are within the existing annual budget for short breaks provision.
21. It is feasible, given the growth in demand for services and market challenges in delivering sufficient and consistent provision, that new investment will be necessary to ensure that the council is able to meet its statutory responsibilities for short breaks in the longer-term. The redesign and recommissioning work to be undertake during the extension period will provide costed options for recommendation through the council's standing governance procedures.

## Legal implications

22. There is a legal duty upon the local authority to provide services to provide short breaks for the carers of disabled children. This duty is found within Paragraph 6(1) (c) Children Act 1989, as amended by the Children and Young Persons Act 2008:-
23. Schedule 2 of the Children Act 1989, Paragraph 6 states :-

Every local authority shall provide services designed—

- (a) to minimise the effect on disabled children within their area of their disabilities; and
- (b) to give such children the opportunity to lead lives which are as normal as possible.

24. Section 25 of the Children and Young Persons Act 2008 details the following:-

Breaks from caring for disabled children

(1) Paragraph 6 of Schedule 2 to the 1989 Act (provision by local authorities for disabled children) is amended as follows.

(2) The existing provision becomes sub-paragraph (1) of that paragraph.

(3) In that sub-paragraph, after paragraph (b) insert “; 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.”

(4) After that sub-paragraph insert—

“(2) The duty imposed by sub-paragraph (1) (c) shall be performed in accordance with regulations made by the appropriate national authority.”

25. Therefore, the legal implications of not taking the decision are that the local authority would be at risk of being in breach of its statutory duty to provide short breaks to carers of disabled children in Herefordshire. There is a significant demand for this service provision in Herefordshire which has increased in recent years, particularly since the pandemic. Review of the adequacy of the current contract framework alongside exploration of other providers may be required during the extension period, but this can be done whilst there is a contract in place and will ensure that the local authority continues to meet its statutory duties.
26. An extension to the Dynamic Purchasing System is permissible under the Public Contract Regulations 2015 and by the nature of a Dynamic Purchasing System it should remain open to new providers throughout its term. There are no legal implications to extending the existing provider contracts

## Risk management

| Risk | Mitigation |
|------|------------|
|------|------------|

|     |   |  |
|-----|---|--|
| 27. | It may be perceived that no new contracts can be awarded during the extension period, potentially limiting provision  | The Dynamic Purchasing System allows new providers to apply to become an approved short breaks provider at any time, subject to complying with a pre-approval assessment process similar to normal tender requirements. Commissioners continue to have active dialogue with potential new providers and were successful in bringing in new service to the short breaks offer in 2021/22.   |
| 28. | Limited capacity within the market may impact on the amount and timeliness of support provided to some families, which may fall short of their assessed needs and mean that the Council is unable to meet its statutory duty in this regard | <ul style="list-style-type: none"> <li>Where appropriate, the council will work with families to identify alternative ways that need could be met, for example through a direct payment to fund a personal assistant</li> <li>The council will work with existing service providers and families to appropriately prioritise the available capacity</li> <li>Work will be completed in 2022/23 to redesign the short breaks offer so that it becomes more capable of meeting the expected demand for services</li> </ul> |
| 29. | Limited capacity and competing priorities within the children's commissioning team may impact on the progress of planned service redesign work during 2022/23   | <ul style="list-style-type: none"> <li>The children's commissioning manager has appointed an additional part-time officer that will support this and other commissioning work</li> <li>The children and young people's directorate has requested additional project management support</li> <li>The overall work programme is now overseen by the council's all-age commissioning arrangements.</li> </ul>   |

## Consultees

30. As part of the work to prepare for the strategic recommissioning of the wider short breaks offer, the council has worked through the Special Educational Needs and Disabilities strategy group and with the Herefordshire Parent Carer forum to gather feedback from disabled children and their families. Thirty five responses were received to a children and young people's survey about short breaks, and 45 responses were received from parents of disabled children. These surveys covered the breadth of Tier1-3 short break services.

| What children & young people told us:  | What parents told us:  |
|--|--|
| <p><b>Key themes:</b></p> <ul style="list-style-type: none"> <li>Enjoy online activities being offered and not having to leave the house</li> <li>Enjoy meeting up with friends</li> <li>Enjoy having the money to buy things to keep busy at home</li> <li>Like meeting new people and making new friends</li> <li>Would like more soft play activities</li> </ul> <p><b>What they enjoy:</b></p> <ul style="list-style-type: none"> <li>Horse Riding</li> <li>Bike Riding</li> <li>Walking with buddy</li> </ul> | <p><b>Top of the "Positive" ratings were:</b></p> <ul style="list-style-type: none"> <li>the Targeted allowance scheme with the main reason given as the flexibility given to the families on how the funding could be used. Allowing it to be used to purchase items for their child to use and enjoy at home during the lockdown has been widely appreciated</li> <li>short breaks are a good thing and works well</li> <li>the children are having fun</li> </ul> |

|  |  |
|--|--|
| <ul style="list-style-type: none"> <li>▪ Going to the cinema</li> <li>▪ Youth club (meeting new friends not at the same school)</li> <li>▪ Trampolining</li> <li>▪ Dance</li> <li>▪ Flip out</li> <li>▪ Puzzle Pieces</li> </ul> <p><b>What changes they would like to see:</b></p> <ul style="list-style-type: none"> <li>▪ More guidance on what the targeted short breaks allowance can and cannot be spent on</li> <li>▪ More craft and creative activities</li> <li>▪ To keep the flexibility around what the targeted short breaks allowance can be spent on to enhance home environments</li> <li>▪ More places to meet with friends outside of school and make new friends</li> <li>▪ An increase in funding to be able to support doing activities with friends but also purchasing specialist equipment to make life easier at home</li> </ul> | <p><b>Top of the “Negative” ratings were:</b></p> <ul style="list-style-type: none"> <li>▪ not enough buddies/ buddying hours or</li> <li>▪ local short break services available</li> <li>▪ services closed because of Covid-19 lockdown</li> </ul> <p><b>Suggestions received were for:</b></p> <ul style="list-style-type: none"> <li>▪ more local buddying support</li> <li>▪ wider variety of activities</li> <li>▪ more wheelchair accessible activities and</li> <li>▪ more accessible activities for young people with hidden disabilities</li> </ul> |
|--|--|

31. Service providers have also told us:

- Pandemic restrictions impacted on the ability to provide group-based activities
- Accessing appropriate community venues for group-based activities can be a problem sometimes
- There could be opportunities to develop community-based short break activities between organisations with specialist experience and local community groups or settings
- Providing sufficient front-line daytime staff is a challenge that can be made more difficult when support is mainly required at weekends or during school holidays
- Demand for overnight short breaks is higher at weekends than during the week, sometimes making it difficult to provide breaks at a family’s preferred time
- Overnight providers may be able to offer longer breaks during the school holidays, instead of regular weekend breaks during term-time for some children

32. While the feedback from children, young people, families and providers shows that there are some real challenges to providing sufficient short breaks capacity in Herefordshire, the services that are currently available do provide value to their users. The proposed contract extension will mean that current services can continue and the feedback received will help inform the future redesign of the local short breaks offer during 2022/23.

## Appendices

None.

## Background papers

None identified



## Report Reviewers Used for appraising this report:

**Please note this section must be completed before the report can be published**

|                |  |            |
|----------------|--|------------|
| Governance     | Sarah Buffrey, Democratic Services Officer                   | 17/02/2022 |
| Finance        | Louise Devlin, Finance Manager                               | 03/02/2022 |
| Legal          | Kimberley Gaffey, Head of Law Children and Families          | 16/02/2022 |
|                | Alice McAlpine, Senior Lawyer                                | 16/02/2022 |
| Communications | Luenne Featherstone, Communications Manager                  | 04/02/2022 |
| Equality Duty  | Carol Trachonitis, Head of Information Compliance & Equality | 04/02/2022 |
| Procurement    | Mark Cage, Commercial Services Manager                       | 11/02/2022 |
| Risk           | Chris Jones, Directorate Support Hub Manager                 | 04/02/2022 |

Approved by Darryl Freeman Date 14/03/2022