

## **RESIDENTIAL SHORT BREAKS FOR DISABLED CHILDREN**

Report of the Chief Officer Childrens Services

***Please note that the following recommendations are subject to consideration and determination by the Cabinet (and confirmation under the provisions of the Council's Constitution) before taking effect.***

### **Recommendation:**

- (a) That Cabinet agree, from the 1<sup>st</sup> April 2019, the Residential Short Breaks Services for Disabled Children be brought in house for direct delivery by the Local Authority
- (b) That the Chief Officer for Children's Services, in consultation with the Cabinet Member for Children's Services and Schools, progresses these arrangements and puts in place the appropriate leadership and governance for the services

### **1. Background/Introduction**

- 1.1 Childrens Services in partnership with NEW Devon and South Devon and Torbay Clinical Commissioning Groups (CCGs) are responsible for commissioning a range of short breaks services for disabled children. The SEN Code of Practice (2015) requires the Local Authority to publish this offer for families.
- 1.2 The purpose of these services is to enable children to access opportunities in the community or overnight which supports their development. This also offers families and carers the opportunity to take a break from caring. Families are accessing a good range of community based short breaks and are choosing residential short breaks less; preferring to have choice and control over direct payments or access to community-based resources.
- 1.3 Cabinet agreed on the 11<sup>th</sup> October 2017 to undertake an options appraisal for the Short Breaks Service to consider the future delivery of the service.
- 1.2 An options appraisal and equality impact assessment were undertaken. It was agreed to undertake a procurement for Residential Short Breaks Service's with the LA as lead commissioner by Delegated Decision in June 2018.

### **2. Residential Short Breaks for Disabled Children, current arrangements.**

- 2.1 The current service is provided under the Integrated Childrens Service's contract provided by Virgin Care Ltd. This contract expires on the 31<sup>st</sup> March 2019. The Service operates in four areas of the County to meet the needs of disabled children as close to home as possible.

### 3. Procurement Process

- 3.1 Following the June 2018 decision, a tender process was undertaken. Market warming events showed a good level of interest in delivering this service. Tender launch events were well attended.
- 3.2 The first tender process closed on the 6<sup>th</sup> August 2018, no bids were received.
- 3.3 Feedback from potential bidders was collated to establish the reasons for providers not bidding and to identify any barriers to responding to the opportunity. Following feedback, changes were made to the tender pack, such as changing the termination clauses to balance risk as well as ensuring the transition fund was available for a longer term of the contract.
- 3.4 A second tender process closed on the 1<sup>st</sup> of November. This tender process resulted in one bid being received which was non-compliant and therefore excluded.

### 4. Procurement Options/Alternatives

- 4.1 The following options were identified following the aborted procurement process:
  - a) **Continue with the procurement process** notwithstanding that the sole bid was non-compliant. This option was discounted on the grounds that it would breach public procurement rules with an unacceptable risk of legal challenge together with service continuity and financial risks.
  - b) **Directly award the contract** to a provider in the market. This option was discounted on the grounds that it would breach public procurement rules with an unacceptable risk of legal challenge together with service continuity and financial risks.
  - c) **Run another procurement process.** This option was discounted on the grounds of lack of time and because it was unlikely to result in a different outcome without substantial changes being made to structure of the offer.
  - d) **Insource the service** to the direct management of the Local Authority

### 5. Financial Considerations

- 5.1 This is a jointly commissioned service with the Local Authority and the CCG's having responsibility to fund short breaks services. The current provider has indicated that the staff within the service will be entitled to TUPE transfer. The staff list we have received shows a headcount of 61 staff which equates to approximately 43 FTE.
- 5.2 The original budget for the contract over the three-year period 2019/20 to 2021/22 was set at £4.4 millions which includes CCG contributions of £1.4 millions. The budget of £4.4 millions is predicated on savings arising from a reconfigured service that reflects the shift to more community based short breaks, the preferred option of parents.
- 5.3 The aborted procurement and subsequent shortened timescales will delay implementation of service reconfiguration. As a result the estimated budget

requirement over the three years could be as high as £6.7 millions, creating a potential budget pressure of £2.3 millions.

- 5.4 Recognising that an incoming provider would need to undertake significant service redesign a transition fund was made available. A contingency was also made available to deal with unforeseen circumstances arising from the disaggregation of the wider Integrated Children's Services contract. If the estimated service cost of £6.7 millions holds then the transition and contingency budgets should be sufficient to manage the budget pressure identified.
- 5.5 However, this assumes a significant service redesign can be achieved by mid-year 2020/21 with no additional costs; that skills and resources will be used in a different way thus avoiding the need for redundancies but fully depletes the contingency fund.
- 5.6 Due to constrained timescales support service managers have not yet had opportunity to assess and quantify the corporate impact of bringing the service in house. It is likely that there will be resource implications for support functions, IT and estates which will result in additional costs to the Authority.

## **6 Legal Considerations**

- 6.1 Legal considerations relate to the procurement options and are detailed in section 4. The recommendation to bring the residential short breaks service into the provision of the Local Authority is compliant with the public procurement rules and therefore the lowest risk option.
- 6.2 For the Local Authority to directly deliver short breaks services a range of governance steps will need to be taken. This will include registration with Ofsted and the appointment of oversight to a Responsible Individual.

## **7 Environmental Impact Considerations**

None

## **8 Equality Considerations**

- 8.1 Where relevant to the decision, the Equality Act 2010 Public Sector Equality Duty requires decision makers to give due regard to the need to:
  - eliminate discrimination, harassment, victimisation and any other prohibited conduct;
  - advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
  - foster good relations between people by tackling prejudice and promoting understanding.
  - taking account of age, disability, race/ethnicity (includes Gypsies and Travellers), gender and gender identity, religion and belief, sexual orientation, pregnant women/ new and breastfeeding mothers, marriage/civil partnership status in coming to a decision, a decision

maker may also consider other relevant factors such as caring responsibilities, rural isolation or socio-economic disadvantage.

- 8.2 In progressing this particular scheme/proposal, an Impact Assessment has been prepared which has been circulated separately to Cabinet Members and also is available alongside this Report on the Council's website at: <https://new.devon.gov.uk/impact/>, which Members will need to consider for the purposes of this decision.

## **9. Risk Management Considerations**

- 9.1 A risk register was in place for the re-commissioning of this service and contingency options set out as mitigation for an aborted procurement.

## **10. Public Health Impact**

None

## **11. Summary/Conclusions/Reasons for Recommendations**

- a) That Cabinet agree, from the 1<sup>st</sup> April 2019, the Residential Short Breaks Services for Disabled Children will be brought in house for direct delivery by the Local Authority and;
- (b) That the Chief Officer for Children's Services, in consultation with the Cabinet Member for Children's Services and Schools, progresses these arrangements and puts in place the appropriate leadership and governance for the services.

**Electoral Divisions:** All

Cabinet Member for Children's Services and Schools Councillor James McInnes

Chief Officer for Children's Services Jo Olsson

LOCAL GOVERNMENT ACT 1972: LIST OF BACKGROUND PAPERS

Contact for Enquiries: *Fiona Fleming Head of Commissioning Childrens Services*

Tel No: 01392 383000 Room: 130

<u>BACKGROUND PAPER</u>	<u>DATE</u>	<u>FILE REFERENCE</u>
<i>Cabinet Paper October 2017</i>		