

Report to Ms L Butler, Executive Director of Children, Young People and Learning

September 2020

Extension of Short Breaks Dynamic Purchasing System

Report by Assistant Director Children's Commissioning

Electoral divisions: All

Summary

West Sussex County Council has a statutory duty under the Breaks for Carers of Disabled Children Regulations 2011 to provide short breaks for children and young people with additional needs and disabilities, and their families.

Short breaks cover a range of activities from an hour's sports activity, a summer playscheme, evening cinema trip or a fun day for the whole family. Short breaks enable children and young people with additional needs and disabilities to try new experiences, both with and away from their siblings and parents or carers, giving them the opportunity to learn new skills, develop their confidence and have fun.

Short breaks also give parents and carers a break from their caring role, giving them a chance to rest, catch up on day-to-day activities and spend time with other family members. There is strong evidence that short breaks support the health and well-being of the children and young people receiving the break but also other family members. As families feel well supported and therefore more resilient this offers potential for less draw on specialist services provided by the Council both in children's and ultimately adults' services.

In May 2015 the then Cabinet Member for Children – Start of Life approved the creation of a Dynamic Purchasing (DPS) Scheme for commissioning short breaks (Decision reference [CH04 \(15/16\)](#)). The initial term for the DPS is due to expire in April 2021 and the intention is to extend the DPS for a further two-year period.

Recommendations

The Executive Director of Children, Young People and Learning is asked to approve:-

- (1) The extension of the current Short Breaks Dynamic Purchasing System (DPS) for two years commencing on 1st April 2021.
 - (2) The delegation of authority to tender and award call off contracts from this DPS to the Assistant Director Children's Commissioning
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Proposal

1. Background and Context

1.1 Legal Context for Short Breaks

Local Authorities have a number of legal duties in relation the provision of a range of short break services to individual children and young people with additional needs and disabilities and their families.

1.2 The local authority must provide a range of:

- a) day-time care in the homes of disabled children or elsewhere,
- b) overnight care in the homes of disabled children or elsewhere,
- c) educational or leisure activities for disabled children outside their homes, and
- d) services available to assist carers in the evenings, at weekends and during the school holidays.

1.3 In order to meet the duty to provide short breaks, in 2015, following approval from the then Cabinet Member for Children Start of Life (Decision Reference CYP04(15/16)) a procurement exercise was undertaken to set up a Dynamic Purchasing System to enable the local authority to purchase short breaks. A DPS is essentially a list of providers who meet pre-set criteria and standards defined by the County Council; the DPS remains continually open to new joiners throughout the term of operation thus making it agile and able to respond to changing demand. When a particular requirement arises, a competitive tender (a "mini-competition") is issued to the providers listed on the DPS. Following the tender and evaluation process a Call Off Contract is awarded to the successful provider(s).

1.4 Included with the decision CYP04(15/16) was approval from the Cabinet Member to delegate authority to a senior officer to let the tender and to extend the contract if appropriate.

1.5 The Short Breaks DPS was procured in 2016 for a potential 5-year term, an initial term of 3 years with potential to extend for a further 2 years. Providers were set up with contract terms ranging between 1 year and 5 years. The contract terms were set at different lengths to allow maximum flexibility in order to be able to respond to demand and the changing needs of families. This approach has proved effective and the West Sussex Short Breaks Commissioning model was used by the Council for Disabled Children as a good practice example in their 'Short Breaks Legal Guide for Local Authorities 2017'.

1.6 Currently there are 37 providers on the DPS, and of these, 22 are currently providing breaks to families. The majority of providers are actively bidding for new call off contracts when they are tendered.

2. Proposal Details

2.1 It is proposed to extend the contract as arrangements are working well. Providers have worked hard to establish themselves and develop a wide range of services which is proving beneficial to children/young people and

their families. This extension will also enable us to start market testing and consultation, planning for the new procurement from 2023.

- 2.2 The proposal is to vary and extend the current Short Breaks DPS by an additional two years, commencing on 1 April 2021.

Factors taken into account

3. Consultation

- 3.1 Consultation and engagement have been on-going since the DPS launched in 2015 and has included:

- Attendance at parent/carer events to promote short breaks and obtain feedback from families
- Meetings with young people to hear their views/ideas to develop the scheme
- Direct feedback by parents/carers on short break provision
- Feedback from Providers at Forum meetings
- Engagement and consultation with colleagues from Children's Social Care, Adult Services and Health

- 3.2 Feedback has been positive and families have indicated they value the short breaks support. Where the feedback has identified issues or gaps in provision this has been addressed, either directly with the provider or through the commissioning of new services.

- 3.3 Providers are aware of the proposal to extend the current contracts and have welcomed this approach. All have indicated that they would like to continue to provide short break services to families.

4. Financial (revenue and capital) and Resource Implications

- 4.1. There are no revenue implications from this decision. All resources to meet the County Council's statutory requirement to provide Short Breaks can be met from existing budget allocations. The cost of Short Breaks is £0.977m, per annum. For the two-year duration of this contract extension the total cost will be £1.954m, which is already allowed for within the Children's Services revenue budget.
- 4.2. Whilst support will be required from Procurement, Legal and Financial Services, this can be provided within existing resources and therefore no additional funding will be required to deliver this contract extension.
- 4.3. It should be noted that this contract extension will ensure that WSCC meet their statutory responsibility and provides much valued support to families; it is not expected to deliver financial savings.
- 4.4. Once awarded, the contracts will be managed within existing resources within the SEND Commissioning Team.

5. Legal Implications

- 5.1 WSCC has a statutory obligation to provide a range of short breaks for children and young people.
- 5.2 It is considered that the risk of legal challenge to the contract extension is low. New providers can join the DPS at any time and are eligible to apply for funding, through a formal tendering process, thus eliminating the possibility of legal challenge on the grounds of unlawful exclusion. New joiners to the DPS will be appointed on the same terms and conditions as existing service providers signed.
- 5.3 The Council is a Contracting Authority as defined in the Public Contract Regulations 2015 ("PCR") and as such is governed by those regulations. The value of the proposed extension will be £1.9m.
- 5.4 The value of the proposed contract is therefore above the relevant EU Thresholds as referred to in the PCR of £663,540 for Social and other specific Services ("Light Touch Services"). As such the Council will competitively tender these services in compliance with the procedures set out in PCR in the form of "mini-competitions" as described in paragraph 1.3.
- 5.5 The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") are unlikely to apply to these services.

6. Risk Implications and Mitigations

Risk	Mitigating Action (in place or planned)
WSCC will not meet its statutory requirements to provide short breaks	Contracts will be extended to ensure that families are still able to benefit from accessing short break services
Disruption to service/loss of confidence from families	The extension of the DPS will mean that short breaks will continue without a break in services to ensure that families are still able to benefit from accessing short break services
Providers may close due to funding being removed	Continue with current funding arrangements to support sustainability of local services
Loss of confidence in the council from families	Continue to engage with families, and work with the provider market to adapt services to meet the changing needs of families
Increase in social care support for families, if short breaks are not provided	Continuity of short break services will ensure that families receive the support to look after their families effectively

7. Other Options Considered (and reasons for not proposing)

- 7.1 West Sussex County Council has to ensure that it meets its statutory duty to provide a short breaks programme.

- 7.2 The option to create a new DPS was considered, however providers have worked hard to build relationships with families. Also as providers are able to join the DPS at any time, it is unlikely that this would attract any new providers. Covid 19 has had a significant impact on short break providers, with many of their staff being furloughed. Organisations are working hard to recommence face-to-face services and so creating a new DPS would put an additional burden on providers, as they start to get back to normal.

8. Equality and Human Rights Assessment

- 8.1 The majority of the families who will use these services will have at least one protected characteristic. Short breaks encourage children and young people with additional needs and disabilities to have fun and learn new skills. It also allows their families to have a break from their caring responsibilities. It is unlikely that there will be any negative impact to customers or their families as a result of the extension of the short breaks programme.
- 8.2 The short breaks programme supports the principle that children and young people with additional needs and disabilities and their families should have the same opportunities to undertake everyday tasks as their non-disabled counterparts. Therefore children and young people benefit from the opportunity to meet with their peers, have fun and develop new skills.
- 8.3 The short breaks programme supports and encourages citizenship and social inclusion in local communities for children and young people with additional needs and disabilities.
- 8.4 By organisations actively promoting inclusion this will help to eliminate discrimination, harassment and victimisation.
- 8.5 The County Council is mindful of the protected characteristics of customers and ensures that the service specification sets out how short breaks will improve opportunities for children and young people with additional needs and disabilities and their families to have increased social opportunities in their community and to be treated as equal citizens. As well as specialist providers, there are many mainstream providers, so short breaks help to break down barriers for families, allowing them to access services.
- 8.6 The service specification is fully reflective of all equality and diversity issues. The Local Authority and parent/carers will continue to be involved in the monitoring of equality and diversity issues through a range of systems including monitoring the range of those families who sign up to the disability register.

9. Social Value and Sustainability Assessment

- 9.1 The principles of social value are key to the short breaks programme. It supports the local economy as families engage in activities locally and the build-up networks. It also allows children and young people to access mainstream services, with the additional support required.

10. Crime and Disorder Reduction Assessment

10.1 Not applicable

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Background papers None