

AGENDA ITEM: 10 Pages 47 – 56

Meeting	Cabinet Resources Committee
Date	24 May 2011
Subject	Children and Young People Short Break – Permission to re-tender and extend current contracts
Report of	Deputy Leader of the Council/Cabinet Member for Education, Children and Families
Summary	This report requests authorisation to tender for Short Break provision for disabled children and young people from January 2012 to March 2013; and recommends that the council extends the existing contracts for Short Breaks to the end of December 2011.

Officer Contributors	Jay Mercer, Deputy Director of Children's Service Karina Umeh, Commissioner, Children's Service Sue Reeve, Complex Needs Divisional Manager, Children's Service
Status (public or exempt)	Public
Wards affected	All
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

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1. RECOMMENDATION

- 1.1 That permission is given for Officers to tender for Short Break provision for disabled children and young people for the period January 2012 to the end of March 2013 with the option to extend contracts by a further year, subject to funding being available and providers meeting performance requirements.**
- 1.2 That the requirements of paragraph 5.6.1 and 5.6.2 of the Council's Contract Procedure Rules be waived to allow the extension and variation of existing contracts for short break providers until 30 December 2011.**
- 1.3 Officers are delegated authority to make minor amendments to the proposed allocation of funds that increase efficiency and improve service delivery.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 The Director of Children's Services, in consultation with the Cabinet Member for Children's Services, approved on 31 July 2009 by delegated powers (DPR 851) the award of £232,469.04 to 14 providers for the provision of short breaks during 2009/10.
- 2.2 The Director of Children's Services approved on 29 April 2010 by delegated powers (DPR 1056) the extension of 13 contracts with providers for short breaks for a three month period until 31 June 2010.
- 2.3 Cabinet Resources Committee, 19 July 2010 (Decision item 7) – approved the 2010/11 Commissioning Strategy to enable the growth and development of services to children and young people with disabilities.
- 2.4 The Director of Children's Services approved on 1 October 2010 by delegated powers (DPR 1172) the contract award for short breaks provision for disabled children and young people.
- 2.5 The Director of Children's Service approved on 31 March 2011 by delegated powers (DPR 1308) the extension of 9 contracts with providers for short breaks for a three month period until 30 June 2011.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Council's Short Breaks programme provides a wide range of services to enable disabled children and young people to take part in play, leisure and other activities within their community; receive support in their home and in other settings so they can experience fun and challenging opportunities; while their parents and carers have a break from their caring responsibilities.
- 3.2 The Short Breaks programme intends to further progress the three priorities of the Council's Corporate Plan:
 - Better services with less money – by providing an offer which meets families' preferences and reducing their use of more expensive alternative services
 - Sharing opportunities, sharing responsibilities – by enabling families to continue to care for their children within the family
 - A successful London suburb – by providing a range of quality services which enhance the council's reputation with local families and the community.

- 3.2 The Short Breaks Programme also contributes towards the Barnet Children and Young People Plan 2010-2013 priority 'ensure high quality provision for disabled children and young people and those with complex needs'.
- 3.3 The Council is responsible for ensuring that value for money is obtained from public expenditure and that commissioning activity is managed in ways that provide continuity of support and that minimise disruption for disabled children and young people. The recommendations of this report for further extensions to contracts are intended as a balanced response to these requirements.

4. RISK MANAGEMENT ISSUES

- 4.1 There is a risk involved in the market being robust or sufficiently developed in meeting the changing needs of families as set out in the specification. To help mitigate this Council officers are planning to establish a Short Breaks Provider Forum to share with current and prospective providers identified and projected needs to inform the tender process for January 2012 to March 2013. We will also use specialist networks to promote and publicise the tender.
- 4.2 The current contracts will expire on 30 June 2011 and failure to extend the current contracts will lead to the disruption of short break services to 541 disabled children and young people. These services provide much needed support to families particularly during the summer months of the school holiday periods. A High Court challenge was recently launched against another Council following its decision to withdraw funding for a short breaks service that supports more than 20 disabled children. The Claimants' challenge to the Council's decision to no longer provide them with Council run services was premised on the basis that the Council's business plan had failed to take into account the duty to eliminate unlawful discrimination on the grounds of disability. Failure to provide these services to some of our most vulnerable children and young people may put the Council at significant reputational risk. In many cases these services allow families to stay together and without these services there is likely to be an increase in family breakdown, which may ultimately result in more disabled children and young people coming into care. There is therefore a financial risk, as accommodating more disabled children and young people in care is significantly more costly than the provision of short breaks.
- 4.3 The Council has a new statutory duty under the Breaks for Carers of Disabled Children Regulations 2011 to provide short breaks and any break in service would breach this. This would put the Council at potential risk of judicial review. In order to mitigate these risks, it is recommended that current contracts are extended and varied. In order to ensure continued quality assurance and value for money there is a rigorous process in place for monitoring the performance of providers and this would continue throughout the extension period. The Council will continue to ensure that the provider organisations comply with all relevant and appropriate standards in terms of their, service quality, policies and procedures.
- 4.4 As part of the re-commissioning of Short Breaks it is intended to shift the balance of resources so that more funding is given directly to families in the form of personalised budgets, with less being allocated to commissioned services in 2012/13. There is a risk that providers (both on the open market and those services are centrally commissioned from) may not be able to provide enhanced choice and flexibility to meet the needs of personal budget holders. In recognition of the impact this might have on voluntary organisations, council officers will undertake provider forums and facilitate communications between organisations and CommUnity Barnet, who have previously offered support and advice to organisations. There is also a risk that families will not be willing or able to purchase services independently and that their expectations of personal budgets may not be met. To

help manage this, we will work with the existing parent forums and through other links with parents to enable them to voice their opinions and shape service design and delivery going forwards.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Section 149 of the Equality Act 2010, which came into force on 5 April 2011, sets out the public sector duty, i.e. that all public bodies are under an obligation to have 'due regard' to eliminating unlawful discrimination, advancing equality and fostering good relations in the contexts of age, disability, gender reassignment, (explicitly) pregnancy, and maternity, religion or belief and sexual orientation. A failure to have due regard to a council's statutory duties might result in a successful challenge being made.
- 5.2 The Short Breaks programme supports a very diverse population of disabled children and young people, in particular:
- Children and young people with Autistic Spectrum Disorder (who have severe learning disabilities or behaviour which is challenging)
 - Children and young people whose challenging behaviour is associated with other impairments such as severe learning disabilities.
 - Children and young people with complex health needs including those with disability and life limiting conditions, and/or those who require palliative care and/or those with associated impairments such as cognitive or sensory impairments and/or have moving / handling needs and/or require special equipment / adaptations.

The focus has been on ensuring that those children and young people with the highest levels of need and most vulnerable are able to access and benefit from short breaks.

- 5.3 As part of the re-commissioning process an equalities impact assessment is being undertaken, from which useful information about current service configuration will inform the specification. For example, the majority of children accessing short breaks are in the 8 – 14 years age range. The re-commissioning will address this imbalance of service; seeking to secure services for infants and younger children as well as those over 14.
- 5.4 From 1 April 2011, there is a legal duty for the Council to ensure that organisations commissioned by the Council to deliver services on their behalf meet the requirements of the Equalities Act 2010. Council officers are revising current data collection for the use of monitoring, to ensure organisations are fully compliant. As part of the procurement assessments will be carried out to provide evidence of systems and processes that are in place to enable equality impact assessments to be undertaken.

6. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

Financial

- 6.1 The funding of the Short Breaks contracts is within the Disabled Children's Budget. The current budget for 2011/12 is £1.075m (excluding funding for DCATCH which is a separate scheme). The planned spend for this financial year and indicative budget for 2012-13 is also £1.075m there are currently no plans to decrease this budget and the proposal is consistent with the Medium Term Financial Strategy for the Childrens Service. The planned and indicative spend is as follows;

Service area funded	Planned expenditure	Indicative expenditure
	2011/12	2012/13
Individual commissioning/ small grants programme (personalisation)	£240,000	£290,000
Commissioned services	£650,000	£600,000
In-house services	£85,000	£85,000
Infrastructure	£100,000	£100,000
Total	£1.075m	£1.075m

- 6.2 In relation to the planned expenditure for commissioned services 2011/12, the continuation of services in quarter one has already been granted (NB the quarter one figure is slightly higher (£16,106) than the figure in DPR 1308). The table below outlines anticipated expenditure for the year with quarters two and three as the contract extension period. Quarter four is an indication of the amount of funding which will form part of the re-commissioning.

	QRT1	QRT 2	QRT3	QRT4	Total
Amount	£140,026	£270,735	£124,437	£114,802	£650,000

- 6.3 As part of the process of extending contracts with existing providers, preliminary discussions with providers regarding their costs, a number of small scale efficiencies have been identified. Through reductions in cost of overheads and the costs of activities offered it will be possible to offer short breaks to more families. Six of the nine providers have identified efficiencies. To date efficiencies to the value of £10,422 have been agreed for quarters one and two, and this will be the subject of ongoing discussion with providers. Additional value added opportunities have also been identified and in the longer term optimising the use of one to one support and decreasing dependence on higher levels of support will be pursued. The procurement process will include a target cost reduction of 10% to ensure that good value for money is being achieved in the context of reducing Council budgets.

Procurement

- 6.4 In order to enable the tendering of short break services an exemption of contract procedure rule 5.6.1.3 (that the value of the extension is less than half the cost of the existing contract without the extension) is sought. The justification for this is outlined in the background information section.
- 6.5 For the purposes of the Public Contracts Regulations 2006 (which implement European procurement rules) the service is a 'Part B' service (see paragraph 7.3 below). The tendering of these services will be undertaken as a Barnet open procedure and will follow the guidance set out in the Procurement Code of Practice. The Gantt chart below outlines intended process for re-commissioning Short Break services from 1 January 2012 to 31 March 2012/13.

- 7.3 The service/s to be procured falls within Part B of Schedule 3 to the Public Contracts Regulations 2006. As such, whilst the procurement of the service does not need to be in full accordance with the full European procurement regime, it must generally comply with the specified Regulations, including publication of a Contract Tender advertisement and subsequent Award Notice with a period of 48 days after the award of the contract. The procurement must, also, comply with the EC Treaty principles of non-discrimination and transparency and be subject to a degree of advertising sufficient to enable the market to be opened up to competition. Following the procurement of provider/s, a written contract, which complies with the provisions specified by the council's Contract Procedure Rules, will need to be drawn up and executed on behalf of the parties.

8. CONSTITUTIONAL POWERS

- 8.1 Under the Council Constitution, Part 3, Responsibility for Functions, paragraph 3.3 among other functions the Cabinet Members for resources general powers to authorise inviting tenders for and acceptance of tenders or quotations in accordance with the Contract Procedure Rules. Acceptance must be following consultation with the Cabinet Member or the Leader in cases where the Cabinet Member is the appropriate portfolio holder and paragraph 3.5 states that the Cabinet Committees may discharge the executive functions that fall within their terms of reference, whether or not they are also delegated to officers, except for matters specifically reserved to Cabinet.
- 8.2 Contract Procedure Rules, Paragraph 5.6. sets out the acceptance parameters for, extensions which are that the initial contract must not have been extended before; the value of the extension is less than half the cost of the existing contract without the extension and has a budget allocation. The contracts have previously been extended by the delegated power of the Director of the Children Service.
- 8.3 However, Paragraph 5.8 of the Contract Procedure Rules also states that except in urgent situations or emergency the Contract Procedure Rules may only be waived on the decision of a Cabinet Committee where the Committee is satisfied, after considering a written report by the appropriate officer that the waiver is justified in certain situations, including, where the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of the Contract Procedure Rules is justifiable.

9. BACKGROUND INFORMATION

- 9.1 The Aiming High for Disabled Children programme was a three year programme aimed at increasing the volume and extending the range of short break services for disabled children and their families. These services have been targeted towards the following groups of disabled children and young people;
- a) Children and young people with Autistic Spectrum Conditions (ASD);
 - b) Children and young people with complex health needs;
 - c) Children and young people aged 11+ with moving and handling needs that will require equipment and adaptations;
 - d) Children and young people where challenging behaviour is associated with other impairments (e.g. severe learning disability); and
 - e) Young people 14+ who meet the above criteria.
- 9.2 This successful programme has enabled more than 700 disabled children and young people to access short breaks during 2010/11; offering more than 2,000 opportunities ranging from an after school club to four nights at a specialist adventure camp. These have promoted their involvement in a range of challenging and enjoyable activities,

making friends and developing their interests, while at the same time benefiting their parent and siblings by providing them with a break from their caring responsibilities.

- 9.3 From 1 April 2011, under the Breaks for Carers of Disabled Children Regulations 2011 local authorities have a new statutory duty to provide a short breaks service to carers of disabled children. Section 25 of the Children Act (1998) places a duty on local authorities to *'assist individuals who provide care for disabled children to continue to do so, or to do so more effectively, by giving them breaks from caring.'*
- 9.4 From 2011, and to support this new duty, the funding for short breaks will be through the Early Intervention Grant (EIG). The Council did not get notification of the EIG allocation until mid December. The amount of EIG funding that would be available to support Short Breaks was one of the more variable elements of budget-setting, due to the completely changed grant arrangements for the Children's Service and the competing requirements, in the context of an overall reduction in budget, of the different services which could be partially or wholly funded via the EIG. The exact amount available for Short Breaks was established in March 2011.
- 9.5 As a result of this delay in confirmation of the funding for short breaks going forward, the procurement process was pushed back beyond the point at which services could be commissioned before the ending of the current contracts in April 2011. Therefore a three month extension was granted for nine of the ten organisations commissioned in October 2010 to continue providing a range of activities including daytime and overnight holiday provision; weekend, after school clubs and contract caring provision; and personal support to enable children and young people to take part in universal and specialist activities. A further six month extension is now being requested, the reasons for which are given below.
- 9.6 The reasons for extending contracts are to;
- a) Offer parents an appropriate level of reassurance concerning provision for their child/young person.
 - b) Enable providers to plan their services including the booking of venues, and the employment of paid staff and volunteers especially during holiday periods.
 - c) Enable the Council to continue to meet its new duty and to ensure that the re-commissioning of services meets need and maximises value for money. A need assessment involving consultation with families and other stakeholders is planned for May and early June which will inform the development of the Short Break strategy including a commissioning plan for 2011/12 – 2012/13.
 - d) Allow the Council to meet all relevant procurement timescales and requirements for the re-commissioning of the Short Break service from January 2012.
 - e) Minimise unnecessary administrative and legal work on repeated short-term contract renewal, involving costs for the council and providers.
 - f) Extending the contract will enable appropriate time for officers to consult with service users and current and potential providers to ensure that the new service/s are re-commissioned in a way that achieves best value for money, via improved efficiencies identified by providers and the increased use of personalised budgets. Government published a green paper on SEN and disability in March 2011, which included an increased emphasis on integrated services, parental choice and the importance of making personalised budgets available. Extending the contract will ensure there is enough time to build sufficient flexibility into the new contracts, so that services are re-commissioned in a way that enables us to respond to the personalisation agenda.

- 9.7 The Short Break's contracts will expire on 30 June 2011 and Contract Procedure Rule 5.6.1, which deals with contract extensions, requires specified criteria to be met before a contract can be extended.
- 9.8 Contract Procedure Rule 5.6.2. will apply as the services to be delivered in quarter two will vary from those delivered in the current contract. Contract Procedure Rule 5.6.2 in the case of a contract variation requires in accordance with the terms and conditions of that contract that the variation is notified to and agreed in writing with the contractor; and that any additional expenditure necessarily incurred does not exceed 10% of the initial contract.
- 9.9 In order to enable the tendering of short break services an exemption of contract procedure rule 5.6.1.3 (which stipulates that the value of the extension is less than half the cost of existing contract without the extension and has a budget allocation) is being sought. A contract extension has already been granted for a three month period until 30 June 2011. The proposed extension of the contract from 30 June 2011 to 31 December 2011 will result in the extended contract exceeding the parameters set out in Contract Procedure Rule 5.6.1.3. Contract Procedure Rule 5.8 states that Contract Procedure Rules can be waived on the decision of a Cabinet Committee if "the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of the Contract Procedure Rules is justifiable." The justification for the extensions are set out in paragraphs 9.3 to 9.6.
- 9.10 Also an exemption of contract procedure rule 5.6.2.2 (which stipulates that any additional expenditure in relation to contract variations does not exceed 10% of the initial contract value) is also being requested. Historic patterns of delivery and expenditure quarter two is our period of highest volume and cost. This is because this period includes six weeks of school holiday and it is during these times were the demand from families and the need to provide a comprehensive package of support is at its greatest. There are a further five weeks of school holiday during quarters three and four as well as the on-going out of school support to families. Expenditure on the proposed contract variation will exceed 10% of the initial contract. Accordingly, the Committee are requested to approve a waiver of Contract Procedure Rule 5.6.2.2 for the reasons set out in paragraph 9.8.

10. LIST OF BACKGROUND PAPERS

- 10.1 None.

Legal – PD
CFO – JH

