

**Open Report on behalf of Debbie Barnes, Executive Director of Children's Services**

Report to:	<b>Councillor Mrs P A Bradwell, Executive Councillor Adult Care, Health and Children's Services</b>
Date:	<b>15 December – 22 December 2017</b>
Subject:	<b>Domiciliary Care and Short Breaks Services for Children with Disabilities</b>
Decision Reference:	<b>I014802</b>
Key decision?	<b>Yes</b>

**Summary:**

Children's Strategic Commissioning Service is currently reviewing the Domiciliary Care and Short Breaks services that support children with disabilities (CWD) and their families, which are currently outsourced. The annual value of these contracts in 2016/17 was £820,148.

The services provide much needed support and respite to Children with Disabilities and their families to ensure that, with additional support, the child may remain with their family in their own home.

This report aims to update the Executive Councillor for Adult Care, Health and Children's Services on the services commissioned for CWD, to highlight future commissioning intentions, and to seek approval to re-procure these services by means of an open competitive tender. As there is likely to be minimal interest in the market for a Domiciliary Care service for CWD on its own, it is proposed that two other contracts for CWDs (short breaks services) are re-commissioned at the same time as the Domiciliary Care service to generate interest in the market.

**Recommendation(s):**

That the Executive Councillor :

1. Approves the re-commissioning of the Domiciliary Care, Targeted Positive Activities (TPA) for Young People with Disabilities and Early Support and Learning Provision (ESLP) services in Lincolnshire with start dates of no later than 1 October 2018.
2. Approves that a commissioning exercise be undertaken to deliver contracts for each element of the short break services to be awarded to a single or multiple provider(s) of county-wide services.

3. Delegates to the Director of Children's Services, in consultation with the Executive Councillor for Adult Care, Health and Children's Services, the authority to approve the award of the contract/s and the entering into of all necessary legal documentation.

**Alternatives Considered:**

1. Recommissioning the domiciliary care service on its own and not include either of the Short Break services.

The fundamental issue with the domiciliary care service is the inability to be able to recruit carers to offer support during the times when the majority of families need it most (before and after school). This will mean the Council is at risk of receiving minimal or no bids for the service.

2. Do Nothing – and continue with current contractual arrangements. Whilst the ESLP could continue under a contract extension, both the domiciliary care and the TPA contracts need to be recommissioned.
3. De-commission the services beyond the existing contracts, would mean that vital services to CWD and their families would effectively cease and the Council would not be fulfilling its statutory duties in respect of support to CWD.
4. Influence/Partnership working with other agencies to try to secure the continuation of services through them acting either as a commissioner/co-commissioner or provider/co-provider. However there is no requirement for any organisation, other than the Council, to commission or provide these services, and there is no certainty that such partnership working to engage another agency as a provider could be achieved.
5. Insourcing the services within the Council, however there are established providers delivering services in Lincolnshire and these services are not the Council's key areas of expertise and doing so would not immediately result in improved value for money.

These commissioning options are provided in greater detail further on in this report. However It is believed that re-commissioning by means of an open competitive tender is the best approach to securing value for money services from experienced providers that services users will engage with.

The other commissioning options would not achieve this as successfully.

**Reasons for Recommendation:**

By approving the recommended approach to re-commissioning the three services, this provides the greatest opportunity for the Council to secure a suitable supplier(s) to develop a sufficient level of provision and increase the quality of the services that children with disabilities receive across Lincolnshire.

**1. Introduction**

1.1 The services that are in scope include:

- Domiciliary Care
- Early Support and Learning Provision (ESLP)
- Targeted Positive Activities for Young People with Disabilities (TPA)

1.2 It should be noted that under normal circumstances a full commissioning analysis for each service would have been undertaken. However these services were only recently reviewed and commissioned. At that time, extensive engagement was carried out and all feedback was included as part of the Equality Impact Analysis which was used to inform the decision at that time to re-commission the services. This current exercise is to ensure that there is sufficient and sustainable provision going forward, and that the Local Authority meets its obligations.

1.3 Children and Young people with disabilities are 'children in need' as defined by The Children Act 1989 Section 17 (10) and as such are entitled, following assessment of need, to receive services designed to improve outcomes and their life experiences.

1.4 Lincolnshire County Council as a local authority has a statutory duty to give carers of CWD breaks from caring under paragraph 6(1)(c) of Schedule 2 of the Children Act 1989 and in performing their duty the Council must pursuant to the Breaks for Carers of Disabled Children Regulations 2011:

- Have regard to the needs of those carers who would be unable to continue to provide care unless breaks from caring were given to them; and
- Have regard to the needs of those carers who would be able to provide care to their disabled child more effectively if breaks from caring were given to them to allow them to –
  - i) Undertake education, training or regular leisure activity
  - ii) Meet the needs of other children in the family more effectively, or
  - iii) Carry out day to day tasks which they must perform in order to run their household.

1.5 Failure to meet this statutory duty and to have sufficient provision to meet the needs of CWD means Lincolnshire County Council would be in breach of the law and would leave itself exposed to an increased risk of judicial review. Previous engagement with families and other stakeholders when considering

options to de-commission these services received substantial challenge and the decision was taken to re-commission this valued provision.

## **2. The Services**

### **2.1 Domiciliary Care**

2.1.1 The service is currently commissioned through a contract (value £0.414m p/a) with Lincolnshire Community Health Service (LCHS), and provides a range of personal care duties which enables CWD and their parents/carers to help maintain and supports them to stay safe and be healthy in their own home.

2.1.2 The type of care for CWD includes:

- Support them in their own home, with their parents/carers present;
- Provide assistance with administration of medication that may involve some invasive procedures;
- Enable them to develop their personal and independent living skills and be self-caring where ever possible;
- Support and enable their parents/carers to develop the skills needed to care for them throughout childhood;
- Provide assistance for the child or young person at meal times;
- On certain occasions provide assistance throughout the night/out of core hours;
- Where required provide emergency response care within 24 hours of notification to prevent family breakdown;
- On certain occasions where required contribute towards End of Life Care.

2.1.3 The contract runs from 01/11/15 until 30/09/18 with an option to extend for a further 2 years. The service is required to deliver 450 hours of domiciliary care per week in the family's home following an assessment of need.

2.1.4 The current service was commissioned alongside Adult's homecare with the intention of maximising any potential synergies and integration across each service, whilst ensuring best use of resources. However it was clear from this exercise, that adult homecare providers did not have the appetite to diversify into the children's marketplace given the low volume and the common requirements of children and young people, i.e. services required at the same time of day (early mornings and evenings) and with wide coverage, as no bids were received.

2.1.5 The decision was made not to extend the current contract due to the inability to deliver the contracted hours which has been caused by difficulties recruiting and retaining staff. This in turn led LCHS to confirm their intention to exit the existing contractual arrangements at the contract end date of 30 September 2018 or earlier if a suitable alternative provider can be in place.

2.1.6 Currently the existing domiciliary care provision is unable to meet current and increasing demands due to staffing levels, which means that Children's

Services are relying heavily on putting in place spot purchase arrangements with additional domiciliary care providers.

- 2.1.7 The current domiciliary care service is based on the specified unit costs of £18.67 per hour for urban work and £19.16 per hour for rural work. The contract was previously delivered by Action for Children with an annual value of £0.75m, and a unit cost of £32.42 per hour (based on 450 delivery hours per week).
- 2.1.8 External benchmarking suggests that the average price expected by providers is nearer to £26.00 per hour, and that delivering below 500 hours per week is sub optimal for providers. Benchmarking has also highlighted that the costs of delivering domiciliary care to children is greater than adult provision due to the specialism and intimacy of the care required.
- 2.1.9 Many local authorities face very similar local pressures in respect of, recruitment in their localities, i.e. competition from other employers, external perceptions of the care sector relating to role, low-pay and limited career paths.
- 2.1.10 Consideration should be given to adopting an enhanced hourly rate which is both reflective of the market and also provides the ability to recruit to the specialist care workers required for children's needs.
- 2.1.11 Due to the nature of the service (early mornings and evenings) new staff have been difficult to recruit, most applicants stated that they wanted full time hours and those wanting part time hours wanted to do them either over 2 days or just morning care, unfortunately the children are at school during the day and work cannot be performed during this time.
- 2.1.12 Where the current provider is unable to deliver the required support, additional support is sought by way of spot purchasing from alternative care providers which brings added costs to the budget but also has an impact on resources within the service area.
- 2.1.13 The previous lack of market interest in domiciliary care highlights the risk that there may not be a provider interested in bidding to deliver the service. However by procuring the services together as three separate lots, increasing the scope and provide flexibility for bidders, should generate more interest from the existing market and also could attract potential new entrants.

## 2.2 Early Support and Learning Provision (ESLP)

- 2.2.1 The ESLP service for CWD and their families in Lincolnshire is commissioned through a single contract (value £0.196m p/a) with Kids, an external supplier. The contract runs until 30/04/18 with an option to extend for a further 2 years. Since the decision was taken not to extend the domiciliary care contract, the ESLP service has been extended until 30.09.18, which ensures that all services now have the same expiration date.

2.2.2 The service is aimed at improving outcomes for young children under 5 who have significant disabilities and/or complex medical needs, including: children with physical and sensory impairments, significant learning difficulties, emotional and behavioural difficulties and social and communication disorders, children with complex health needs, including epilepsy, tube feeding and oxygen dependency. A high proportion of children are likely to require additional support to meet their individual personal care, supervision and learning needs.

2.2.3 The ESLP sessions are available once a week from Children’s Centres at the following locations: Louth, Lincoln, Birchwood, Sleaford, Boston, Skegness, Gainsborough, Grantham, Waddington, Holbeach, Spalding and Stamford. The sessions last for 1 hour and 59 minutes, with an additional parent support hour either before or after each session, with 12 sessions per week (over 46 weeks) being delivered. In total, over 550 sessions are put on each year, with on average 66 children attending per week in the following locations:

Settings and days held	Grantham (Monday)	Lincoln North (Monday)	Gainsborough (Tuesday)	Boston (Tuesday)	Lincoln North (Wednesday)	Birchwood (Wednesday)	Skegness (Wednesday)	Stamford (Wednesday)	Sleaford (Thursday)	Louth (Thursday)	Holbeach (Friday)	Waddington (Friday)	Spalding (Friday)	Total Children Attending
Average number of children accessing	4	7	7	5	7	6	5	4	3	7	3	4	4	<b>66</b>

### 2.3 Targeted Positive Activities for Young People with Disabilities

2.3.1 This service is commissioned through a contract (value £0.21m p/a) with Action for Children. The contract runs until 30/09/18 which includes a six month extension that ensures all services now have the same expiration date following the decision not to extend the domiciliary care contract. This service provides targeted positive activities for young people with disabilities throughout Lincolnshire.

2.3.2 These targeted activities provide the necessary support to meet the needs of:

- Children and Young People who have severe learning disabilities or behaviour which is challenging, or, those children and young people whose 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.

2.3.3 The service provides a wide range of activities, led by the individual preferences and capabilities of children and young people in attendance and

includes activities comparable with their peers but suitable to their abilities. Services are held in suitable venues for delivery of activities and which are secure, accessible, of adequate size, welcoming, suitably equipped and located appropriately throughout Lincolnshire which are easy for families to access in order to maximise attendance.

- 2.3.4 The provision sessions are held across the County in all of the districts in the following towns; Boston, Gainsborough, Horncastle, Lincoln, Spalding, Washingborough, Grantham.
- 2.3.5 Sessions are provided in each district twice a month for community activities and youth groups, with holiday clubs being provided in each of the school holidays. In total, nearly 500 sessions are put on each year, with just over 240 children and young people registered to attend the various sessions/activities.
- 2.3.6 In order to ensure that there is sufficient and sustainable provision going forward, it is essential to secure providers that can deliver all the services and that this is achieved via an open competitive tender.

### **3. Commissioning Options**

#### **3.1 Do Nothing**

- 3.1.1 This means continuing with current contractual arrangements and not altering services or funding.
- 3.1.2 Doing nothing would mean that whilst the ESLP service contract could continue via a contract extension, both the domiciliary care service and the TPA contracts would expire and so at the very least the Council would be required to recommission these services due to the need being identified by parents/carers during the last review, and the Council's statutory duty to provide these services. Therefore this is not a legitimate option for consideration.

#### **3.2 Decommissioning**

- 3.2.1 This means not commissioning any services beyond existing contracts and that services would effectively cease.
- 3.2.2 The services commissioned support the Council in fulfilling its statutory duty in respect of children and young people who are classed as 'children in need' under the Children Act 1989 Section 17 (10) and as such are entitled, following assessment of need, to receive services designed to improve outcomes and their life experiences.
- 3.2.3 Lincolnshire County Council has a statutory duty under paragraph 6(1)(c) of Schedule 2 of the Children Act 1989 to give carers of disabled children a break from care provision. If the services were to be decommissioned the Council would be in breach of their statutory duty and would open themselves up to the risk of a legal challenge. The Council would also have a duty to consult on this,

with the very likely impact being significant reputational damage and public opposition. There would also be a risk of legal challenge with the Council needing to be very clear about the Short Break services it is securing locally to meet its statutory obligations.

- 3.2.4 Decommissioning is not recommended as we would not be fulfilling our statutory duties, and because there is strong evidence that offering Short Break services to children and young people with disabilities, particularly for vulnerable families, improves outcomes and social development.

### **3.3 Influencing/Partnership**

- 3.3.1 This means not commissioning any services beyond existing contracts but working with other agencies to try secure the continuation of services through them acting either as a commissioner/co-commissioner or provider/co-provider.
- 3.3.2 There is no requirement for any organisation, other than the Council, to commission or provide these services. The responsibility for commissioning clearly lies with the Council to provide these services, ultimately enabling the Council to meet its statutory duties. Commercial aspects of the service cannot be delivered without funding and it is not feasible to consider that these services could be delivered through influence/partnership alone. This is not a legitimate option for consideration.

### **3.4 Insourcing**

- 3.4.1 This means bringing the services within the Council with staff potentially being subject to TUPE rights and then being employed and managed by the Council.
- 3.4.2 Children's Services are keen to create a sufficient and sustainable market place. These services are not the Council's key areas of expertise, and would need to rely on any transferring staff or newly recruited staff to establish a service. There are no identified value for money benefits in bringing the services in house. Anecdotally, vulnerable families report that they like to engage with non-Social Care providers for these services.

### **3.5 Re-commissioning**

- 3.5.1 This means going out to the market, by means of an open competitive tender process, with the intention of continuing to outsource the services to meet the requirements of service users.
- 3.5.2 Lincolnshire's market of providers for domiciliary care services for children is narrow with little competition. In 2015, the domiciliary care Children's service was commissioned alongside the domiciliary care Adult Services through an open competitive tender exercise based on a maximum 3 years contract. Only two bids were received for the Children's domiciliary care service from organisations that already operating in Lincolnshire. The second provider withdrew at a very late stage, leaving LCHS the only bidder.



3.5.3 Any opportunity for the market to bid again, needs to be based on a higher value/larger scope contract in order to increase the level of interest from the existing market and new entrants. Therefore the approach to recommissioning the three services together is expected to deliver this interest.

3.5.4 The scale of the contract shouldn't preclude small medium enterprises from being able to bid and consortium bids will be encouraged.

3.5.5 Benefits include:

- To deliver outcome based support using flexible care plans that shift away from minute by minute visits.
- Continue to support an experienced market that can also attract funding from outside of the Council and thus strengthen Lincolnshire's economy.
- Clear understanding of how funding is being used as a result of providers being required to submit a detailed budget breakdown during the tender process and also required to provide regular detailed financial reporting.
- Reduced likelihood of negative media attention.
- To ensure greater flexibility and capacity, whilst still maintaining the geographical focus which recognises the issue of travel time across Lincolnshire.
- To create opportunities for Providers to bid for one or more services which may provide greater return on investment whereby the Council may be able to leverage a reduction in overhead costs from the Provider.
- To deliver a more generic approach focussing on needs and outcomes rather than diagnosis.
- To improve quality within CWD domiciliary care services.
- To ensure the best value available within the market.
- To ensure services are able to respond to changing needs and demands.
- To open up a greater pool of potential bidders from a more competitive market.

3.5.6 Dis-benefits include:

- Reduced direct control of budget, performance and flexibility over service delivery.

#### **4. Legal Issues:**

##### *4.1 Equality Act 2010*

4.1.1 Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 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.
- 4.1.2 The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
- 4.1.3 Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:
- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - 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;
  - 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.
- 4.1.4 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 4.1.5 Having due regard to the need to foster good relations 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 tackle prejudice, and promote understanding.
- 4.1.6 Compliance with the duties in section 149 may involve treating some persons more favourably than others.
- 4.1.7 The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.
- 4.1.8 An initial desktop Equality Impact Assessment has been completed and is attached at Appendix A; this is a live document and continues to be updated. This assessment identifies that there are no specific impacts on those with protected characteristics based on the proposed recommissioning of services. This reflects the fact no significant changes have been made to services.

#### 4.2 *Joint Strategic Needs Assessment (JSNA) and Joint Health and Wellbeing Strategy (JHWS)*

- 4.2.1 The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Well Being Strategy (JHWS) in coming to a decision.
- 4.2.2 Consideration has been given to the JSNA and the JHWS and as referred to above the proposals contribute to the theme: Improve health and social outcomes for children and reduce inequalities and the outcome: Ensure all children get the best possible start in life and achieve their potential.
- 4.2.3 These services provide vital support to ensure that as they grow up, children and young people are able to access the provision and support they need to succeed in education, training and employment, and therefore reduce inequalities.
- 4.2.4 There has been an increase in the number of young people placed in Special Schools. In 2010/11 there were 1,492 commissioned special school places; in 2013/14 there were 1,573 places commissioned and in May 2016 this number had risen to 1,737, highlighting the growing need for services supporting Children and Young People with SEND.
- 4.2.5 The services being delivered to Children and Young People and their families provide respite and support to enable the Children and Young People to remain in their home and not accessing independent provision which has high cost implications.

#### 4.3 *Crime and Disorder*

- 4.3.1 Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.
- 4.3.2 These services are not directly related to preventing crime and disorder however as part of the delivery, services will be engaged in Early Help/Team Around the Child (TAC). These processes ensure that there are appropriate routes to escalate any concerns at the earliest opportunity.

### **5. Conclusion**

- 5.1 The inability to meet demand in the domiciliary care service has enabled the exploration of a different approach to recommissioning all three services. As a result, Children's Services are seeking an approach to recommission

the existing services together to generate sufficient market interest to identify provider/providers that will provide the support to CWD and their families.

- 5.2 These services provide CWD and their families with much needed support and relief. Without which, families would face the risk of going into crisis, suffering family breakdown which could result in children having to go into provision away from the family home potentially having to go to out of county, which would have high cost implications.

**6. Legal Comments:**

The legal background to the decision is set out in the Report. The recommendations are lawful, consistent with the Policy Framework and within the remit of the Executive Councillor.

**7. Resource Comments:**

Currently there is budget provision in 2017/18 to cover the full cost of the contracts for the Early Support and Learning Provision (ESLP) of £196,666 (within the Dedicated Schools Budget (DSB) Code L13617) and the Targeted Positive Activities (PTA) of £240,000 (within L10095).

In respect of the Domiciliary Care, a budget provision of £255,000 in 2017/18 is available (within L10093 'CWD AFC Domiciliary-family support) to cover this contract. The reason this budget is less than the full value of the contract (£414,000) is that LCHS have been unable to deliver the full contracted hours and therefore costs have significantly dropped. It should be noted that the excess budget was utilised elsewhere in Children's Services

Combining the three contracts into one should provide better value for money and a greater number of bids received to choose from.

**8. Consultation**

**a) Has Local Member Been Consulted?**

n/a

**b) Has Executive Councillor Been Consulted?**

Yes

**c) Scrutiny Comments**

The Children and Young People Scrutiny Committee will consider this report at its meeting on 1 December 2017. Comments from the Committee

will be reported to the Executive Councillor.

**d) Have Risks and Impact Analysis been carried out?**

Yes

**e) Risks and Impact Analysis**

The EIA is included in the appendices

**9. Appendices**

These are listed below and attached at the back of the report	
Appendix A	Equality Impact Assessment

**10. Background Papers**

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Jonas Gibson, who can be contacted on 01522 553258 or [Jonas.Gibson@lincolnshire.gov.uk](mailto:Jonas.Gibson@lincolnshire.gov.uk) .