

**CABINET MEETING: 12 JULY 2018**

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**THE PROVISION OF CARDIFF SHORT BREAK SERVICES  
AT TY STORRIE**

**CHILDREN & FAMILIES (COUNCILLOR GRAHAM HINCHEY)**

**AGENDA ITEM: 1**

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**Reason for this Report**

1. To inform Cabinet of the current position in relation to the Cardiff Short Breaks Service at Ty Storrie.
2. To request Cabinet approval to end the current arrangements for the delivery of service at Ty Storrie and to integrate the short break service within Cardiff Council direct provision.

**Background**

3. Cardiff Council currently owns two children's homes. Those children's homes are Crosslands and Ty Storrie.
4. Cardiff Council is the registered provider of Crosslands and the home has an exceptional track record and is highly regarded by the Council and regulators.
5. Action for Children is the current registered provider of Cardiff Short Breaks at Ty Storrie. The home is registered with CIW to provide overnight short stays for up to 8 disabled children and young people at any one time. The service is available to children who are assessed as being in need of Care and Support and have a Social Worker based in the Child Health and Disability teams. The service aims to provide respite to families most in need of a break from caring. In addition the service is designed to support children to achieve individual outcomes by supporting young people to develop social, communication, self-care skills and expand their social networks during their short break stay.
6. The service has been provided by the incumbent provider since the inception of the service in approximately 1997. The service was originally provided from a residential property owned by the provider but funded by the Council on Rhydypenau Road. In August 2011 it was relocated to the bespoke new build Ty Storrie on the site of the new Ty Gwyn School on Vincent Road. The Ty Storrie building is owned, fitted

out, furnished and maintained by Cardiff Council in accordance with the terms of a property and maintenance agreement between the two organisations. The service provider occupies the building under the terms of a licence associated with the service delivery contract.

7. The original plan was for 4 of the beds to be used to deliver Cardiff Short Breaks to children identified via Cardiff Children's Services (and potentially more in the future), and for Cardiff and Vale University Health Board nurses to use 4 of the beds a few nights per week. It was expected that a partnership delivery arrangement between Cardiff Council and Cardiff and Vale University Health Board (CVUHB) would be ready for implementation by 2010/11. However, discussions with The Care and Social Services Inspectorate Wales (CSSIW), at the time identified the need to further clarify registration requirements. As a result, it was decided that it was not appropriate to tender the Cardiff Short Breaks Service at that time. The existing service provider was actively involved in alignment of the service within regulatory requirements, and as such a necessary partner in planning the future service.
8. A single invitation to tender for the service was issued to Action for Children in 2011. The contract with Action for Children commenced on the 22 March 2012 and was extended in accordance with the original terms and conditions until the 13th of June 2013. The contract was further extended until December 2014 and since this time.
9. Action for Children have continued to deliver the service on behalf of the Council out of contract. The Council and the provider have been "holding over" on the same terms and conditions as previously, and this will continue until either party changes or ends the arrangement.

## **Issues**

10. The building has been underutilised since opening. Service levels for the service have been between 1 and 5 children per night, depending on the ability to match children and the preferences of parents. Plans to integrate services would have addressed this issue by adding children requiring nursing to the service.
11. These issues have now been addressed to the UHB's satisfaction. However during the last quarter of 2017/18 Children's Services were informed that the needs of Cardiff and Vale University Health Board (CVUHB) have changed over time, both in terms of increased need and complexity of young people. Their needs can no longer be met by the proposed integrated service.
12. There have also been some concerns about some aspects of the service provided at Ty Storrie resulting in the issuing of a non-compliance notice in March 2017 placed on the provider by the regulator CIW following an inspection.

13. The provider fully cooperated with the Council to address areas of development outlined in the resulting improvement plan and progress was made in a timely and satisfactory way. A follow up inspection was undertaken by the regulator in August 2017 and it confirmed that areas of non-compliance had been successfully addressed and improvements were noted in the Inspector's October 2017 report.
14. However despite the provider's hard work to address concerns it has continued to experience on-going staffing issues which have impacted on the stability of the service.

### **Proposal to Bring the Service In-house**

15. An option appraisal has been undertaken in respect of the future arrangements for delivering the service (**Appendix A**). The three options considered were: do nothing / direct award to existing provider, full tender, or bring the service in house.
16. Under Cardiff Council's Contract Standing Orders and Procurement Rules, 'before any external procurement is considered, it is important to ensure that no existing in-house provision exists for the Goods, Services or Works required. In-house services must be used unless the procuring service area and the in-house services provider agree otherwise'.
17. The People and Communities Directorate already operates Crosslands Children's Home. Given the proven track record of operating Crosslands and the fact that the Council owns the Ty Storrie building, it makes sense to aspire towards greater alignment of Cardiff Short Break with Crosslands. Crosslands provides quality care and value for money and it is therefore believed Children's Services has the capability to do similar in respect of Ty Storrie.
18. Key benefits related to delivering the service in-house are:
  - Streamlining of activity, responsibilities and accountability through the service's appointed manager and it's Responsible Individual.
  - Direct governance and quality assurance, including direct professional supervision of the service manager, management of referrals, Regulation 73 quality of care visits (previously called Regulation 32 visits prior to the change in regulations), Council performance systems, recruitment processes and Human Resources processes.
  - A single record systems for short break and social work staff, which will enable professionals to have real time access to information which impacts on care or planning.
  - Access to training & development opportunities and public sector terms and conditions for new staff are expected to reduce staff turnover and strengthen recruitment and retention arrangements to promote a stable and appropriately qualified staff team.

- Achieving better management of building related issues given that the registered provider will also be the owner of the building.
  - A competitive tender process and potential transfer of services will take significantly longer than a direct transfer of provision to the Council since a tender will take additional time to complete.
19. Continuity of service for children will be maintained since it is expected that staff currently employed by the current provider will transfer to the Local Authority under the Transfer of Undertakings (Protection of Employment) (TUPE) arrangements. Whilst there is currently a vacancy for a manager of the service, it is expected that recruitment to the post will be progressed by the Council following the decision being made to bring the service in-house.
  20. Should the proposal be agreed the council will be in a stronger position to review the model of care and address the issues of underutilisation of the building by exploring additional options.

### **Registration**

21. The Council will need to complete its own application to the CIW to register the service that will be delivered when the arrangement with Action for Children comes to an end.
22. The Council will need to complete a Statement of purpose to support its application and in the first instance will largely align with that of the previous provider to ensure continuity for families during the transition phase.
23. Upon transfer the Council will inherit the responsibilities of delivering the service within the regulatory requirements and will be able to initiate planning to develop and improve the services within the terms of its registration and by varying the statement of purpose over time.

### **The Need to Deliver Prudent Services / Resources**

24. Under the current arrangements, the Council makes a contract payment to the current provider for the provision of the short breaks service and as owner of Ty Storrie, the Council also maintains its own property and equipment budgets.
25. Separately, the UHB makes a direct contribution of £34,029 towards the provision, and in addition to its direct payment to the provider, the UHB also makes a contribution to the Council.
26. Consideration has been given to the potential costs of a Council run service, should it be brought in house. In considering the costs of an in-house option, account has been taken of differing pay grades and terms and conditions that would apply to the staff once they are employed by

the Council. Initial costs are likely to be lower as staff transfer on existing pay scales under TUPE.

27. Taking all available information into account, it is considered that an in-house service could be accommodated within the current funding levels from all sources.
28. It is worth noting that a management fee applies to most social care services contracted by the Council. Delivering the service in-house would support a re-investment of this resource into direct service delivery.

## **Consultation**

29. The proposal does not involve a local issue. The proposal does not require the carrying out of consultation under statute or at law or by reason of some promise or undertaking previously given by or on behalf of the Authority.
30. It is a statutory requirement to provide short breaks services to disabled children and young people with assessed needs. This proposal does not seek to change amounts of delivery of service to this group, but does seek to change the delivery mechanism of the service.
31. Members of the Corporate Parenting Advisory Committee are aware of the service and the recent issues it has faced. They will continue to receive and discuss monthly Regulation 73 Quality of Care Reports for this service (previously received as Regulation 32 reports prior to the change in regulations).
32. Any changes in service design, funding decisions and change in priorities is likely to generate interest from parents, professionals, member of the Federation of Special Schools on site and Elected Members whose constituents have an interest in the delivery of services for disabled children. However, this proposal seeks to bring the existing service in-house in the first instance, with little change to the operational arrangements at that time. It is anticipated that a review of the model of care and the operational arrangements for delivering the service will be undertaken post transfer if the Cabinet is minded to agree the proposal and this will be subject to a specific consultation exercise with all key stakeholders.
33. Parents have been written to, informing them that the Council is considering options for the future of Ty Storrie with in-house being the preferred option (**Appendix B**).

## **Reason for Recommendations**

34. There is no longer a clear rationale for the service to be delivered externally nor a compelling reason why the contract should be awarded to the current provider. The benefits of delivering in-house are outlined in this report.

35. There are some benefits associated with commissioning the service externally which the Council will not be able to replicate in exactly the same way, however the difficulties of the current arrangement and need for high quality consistent service delivery have proved to outweigh the benefits.
36. The proposal to end the current contract and apply for the Council to become the registered provider of Ty Storrie aims to better align the Council's level of control with its ultimate level of responsibility.
37. It is intended that the service will sit within the Specialist Service portfolio of Children's Services and as a result will benefit from greater alignment with other regulated services. Links to the multi-agency Disability Futures programme will support development within the wider partnership context.
38. The Council has the necessary leadership, expertise, and support structures to successfully develop a high quality management and staff team to deliver Ty Storrie. There is therefore a positive outlook to bringing the service in-house.

### **Financial Implications**

39. The report seeks agreement, in principle, to the proposed transfer of the current externally commissioned children's Short Breaks service to an in-house team.
40. The Council currently commissions a short breaks service from an external provider (Action for Children) at a cost of £409,172 per annum. As the Council owns the property, Ty Storrie, from which the service is delivered, it also maintains separate property (facilities management) and equipment budgets totalling £64,070 in relation to the facility. It is also known that Cardiff and Vale UHB also makes a direct contribution of £34,029 towards the running cost of the service. Overall funding for the service, therefore, currently amounts to £507,271.
41. Consideration has been given, in consultation with Financial Services, to the potential costs of an in-house option, taking account of a proposed staffing structure based on Council pay scales, existing non-staff costs, the removal of the provider management fee and TUPE. Taking account of these factors, it is considered that an existing in-house service could be operated within the current funding level for the service. It is assumed property (facility management) costs will remain neutral.
42. Although, it is indicated that the in-house service could be run within the existing funding level, the budget available is effectively £50,000 below this figure. This reflects a budget saving proposal (£50,000) put forward by Social Services in 2017/18, in relation to the integration of services delivered from Ty Storrie, via a partnership agreement between CVUHB and Cardiff Council. Given the wider issues relating to the service, the partnership agreement with CVUHB cannot be progressed and this

saving cannot therefore be realised in the short term. This is, therefore, an ongoing issue that the Directorate will need to address.

43. As indicated in the report, in addition, to its direct payment to the provider, the UHB also makes a contribution of £100,000 to the Council, towards the contract payment the Council makes in respect of the service. The ongoing provision of this contribution from the UHB is currently the subject of separate discussion. Although, it is considered that the proposal to bring the service in-house would not adversely affect any decision over this element of funding, efforts should continue to secure this funding element for the service. The withdrawal of this funding would potentially cause a significant funding issue for the Directorate.
44. Whilst, the report notes the operational issues that support an in-house, as opposed to an externally commissioned, option it is essential that service delivery costs are kept to a minimum in order to ensure value for money for the Council.

### **Legal Implications**

45. The proposal sought, put simply, is to transfer the delivery of the Short Break Respite services at Ty Storrie to the Council's in-house team.
46. By way of background, the incumbent provider has been delivering these services at Ty Storrie for a number of years. A formal contract governing the provision of the services expired in December 2014 ("the 2014 contract"). That said, Action for Children has continued to deliver the services at Ty Storrie in consideration of the contract payment and accordingly there is a contractual relationship in place between the parties. Arguably, in the absence of a written agreement, the terms and conditions of the written contract continue to apply and it is understood that both parties have continued with their respective contractual obligations under the 2014 contract. With regards to terminating the existing contractual relationship, any such written notice period should be both proportionate and reasonable having regard to the nature of the services and all material factors.
47. The proposal does raise TUPE issues – please refer to the HR implications set out in the report.
48. It is noted from the body of the report that the Directorate intends to carry out further consultation upon the proposed transfer of the services to the Council's in-house team. Consultation gives rise to the legitimate expectation that due regard should be had to the outcome of any such consultation and in this regard it is noted that the delegation of authority sought for the Corporate Director is caveated upon that basis.

### **Equality Duty**

49. In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010. Pursuant to these legal

duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a). Age, (b) Gender reassignment (c) Sex (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h) Sexual orientation (i) Religion or belief – including lack of belief.

50. The report identifies that an Equality Impact Assessment has been carried out and is appended at **Appendix C**. The purpose of the Equality Impact Assessment is to ensure that the Council has understood the potential impacts of the proposal in terms of equality so that it can ensure that it is making proportionate and rational decisions having due regard to its public sector equality duty. The decision maker must have due regard to the Equality Impact Assessment in making its decision.
51. The decision maker should also have regard when making its decision to the Council's wider obligations under the Social Services and Wellbeing (Wales) Act 2014 and The Wellbeing of Future Generations (Wales) Act 2015. In brief both acts make provision with regards promoting/improving wellbeing.

### **HR Implications**

52. There has been Trade Union consultation on the information held within this report. Feedback from the consultation which took place on the 2<sup>nd</sup> of July 2018 was positive. They were supportive of the proposal and agreed that it would enable Children's Services to have more control over the quality of the provision and future developments. As stated in the report there are staff which will transfer to the Council from the current provider under the Transfer of Undertakings (Protection of Employment) Regulations 2006. The Council will abide by this legislation as it is set down and ensure that all consultation requirements are met.

### **RECOMMENDATIONS**

Cabinet is recommended to:-

1. Agree, in principle, to the proposed transfer of the provision of the Short Break services to the Council's in-house team, as detailed in the body of the report, subject to the outcome of further consultation with relevant stakeholders, including service users; and
2. Should recommendation 1 be approved, delegate authority to the Corporate Director People and Communities in consultation with the Cabinet Member for Children and Families, the Section 151 Officer and the Director of Law and Governance, to attend to all substantive matters to give effect to the proposal (provided that the Directorate has taken account of the outcome of the further consultation referred under recommendation 1) including (without limitation):-

- (i) Liaising with the incumbent provider to agree a mutually agreeable date to terminate the existing contractual arrangements and to transfer the delivery of the Short Break service to the Council's in-house team;
- (ii) Deal with all associated matters, including (without limitation) the registration of the Ty Storrie property and the termination of the existing licence arrangements.

<b>SENIOR RESPONSIBLE OFFICER</b>	<b>SARAH MCGILL</b> CORPORATE DIRECTOR PEOPLE & COMMUNITIES
	<b>6 July 2018</b>

*The following appendices are attached:*

Appendix A - Options Appraisal  
Appendix B - Letter to parents  
Appendix C - Equalities Impact Assessment

*The following background papers have been taken into account:*

Officer Decision Report: Interim contract arrangements relating to the provision of Short Break Services at Ty Storrie (dated 4th of June 2013)  
Officer Decision Report: Extension to the contract relating to the provision of Short Break Services at Ty Storrie (dated 2nd of December 2013)