

THE SHORT BREAKS PARTNERSHIP



How Short Breaks fit into the Local Offer

By Steve Broach, Barrister at Monkton Chambers

The 'Local Offer' introduced by [section 30 of the Children and Families Act 2014](#) ('CFA 2014') is fundamental to the SEN and disability reforms – given that the vast majority of disabled children and young people will not benefit from the new 'Education, Health and Care Plans' which are reserved for those with significant special educational needs. By contrast the 'Local Offer' is intended to benefit all disabled children and young people in a local authority's area.

However the statutory scheme does not mandate any particular level of support or provision that must be made by every local authority under their Local Offer. Instead the [Code of Practice](#) states (para 4.2) that the Local Offer has two key purposes:

1. To provide clear, comprehensive, accessible and up-to-date information about the available provision and how to access it, and
2. To make provision more responsive to local needs and aspirations by directly involving disabled children and those with SEN and their parents, and disabled young people and those with SEN, and service providers in its development and review

Considering these objectives in the context of Short Breaks, every local authority must therefore have a Local Offer which:

1. Provides high quality information on available Short Break provision and how this can be accessed; and
2. Helps ensure that Short Break provision is responsive to the needs and aspirations of disabled children and young people and families in their area.

The first of these aims relating to information is clearly linked to the duty to have in place a 'Short Breaks Services Statement' which was covered in the [first issue of this bulletin](#). Indeed at para 4.44 the Code of Practice makes clear that the Short Breaks Services Statement will '*form a core part of the Local Offer*'.

The duty to include information on social care and health services, including Short Breaks, in the Local Offer is found in schedule 2 to the [SEN and Disability Regulations 2014](#) ('the 2014 Regulations'). Paragraphs 12 and 13 of the schedule read mandate that the following information must be included in every Local Offer:

12. Health care provision for children and young people with special educational needs or a disability that is additional to or different from that which is available to all children and young people in the area...

It is important to note that paragraph 12 specifically requires the Local Offer to include (a) services for early years providers (and schools and post-16 institutions) to assist them in supporting children and young people with medical conditions and (b) arrangements for making universal services accessible to children and young people with special educational needs and disabled children and young people. The second point in particular should help make universal services which provide a form of short break more accessible to disabled children with health needs.

13. Social care provision for children and young people with special educational needs or a disability and their families...

This undoubtedly includes Short Break services, as these are 'services provided in accordance with section 17 of the Children Act 1989', see paragraph 13(a).

Paragraphs 12 and 13 of schedule 2 to the 2014 Regulations therefore clearly require that information about all Short Break provision which is expected to be available both inside and outside the local authority's area, be published in local offers whether this is provided or funded by health or social care.

There is to date only one High Court judgment considering the requirements of the Local Offer, being [R \(L and P\) v Warwickshire CC \[2015\] EWHC 203 \(Admin\)](#). In that case the claimants' solicitor identified that the Local Offer was only compliant with seven of the 23 paragraphs in schedule 2. The Judge held that 'the proposed offer needs a good deal more work before it is issued in final (but variable) form' (para 79). The Warwickshire judgment therefore emphasises that every Local Offer must comply with all the requirements of schedule 2 – including here the requirements that it must contain health and social care provision for disabled children and young people, such as Short Breaks.

The second part of the purpose of the Local Offer, as set out above, is to '*make provision more responsive to local needs and aspirations*'. The mechanism to achieve this is the requirement in regulation 56 of the 2014 Regulations for local authorities to publish comments on the Local Offer. These comments can be made not only on the accessibility of the Local Offer and the process by which it was developed and reviewed but also on '*the content of its local offer, including the quality of the provision that is included and any provision that is not included*'.

Local authorities have a positive duty to 'seek' comments from disabled children, young people and parents on Short Break provision, as well as all the other provision covered in the Local Offer (regulation 56(1)). Comments must be published at least annually (Regulation 56(3)) and on an anonymised basis. Given that the Local Offer duty came into force on 1 September 2014 all local authorities should by now have published at least the first set of comments.

Why do Local Offer comments matter? The answer to this comes from section 27(2) of the Children and Families Act 2014, which requires local authorities to keep under review local provision and consider the extent to which it is sufficient to meet local needs. As such if a local authority is told in comments on the Local Offer that its Short Break provision is inadequate, it will have a duty under [section 27 CFA](#) to review this and determine whether further investment in Short Breaks is required. This reinforces the specific sufficiency duty on Short Breaks imposed by the Short Breaks Regulations covered in the [first issue of this bulletin](#).

For local authorities to determine whether Short Break services are sufficient they will of course need to gather information beyond the Local Offer comments. A decision on sufficiency will require the local authority to understand the size and needs of its population of disabled children and young people and review this against the level and quality of available services. In carrying out this exercise Local Authorities will need to have regard to a range of data sources, including its Joint Services Needs Assessment (JSNA) and its disabled children's register – the Warwickshire case emphasises that the duty to maintain such a register under paragraph 2 of schedule 2 to the Children Act 1989 remains in force.

It will also be necessary for local authorities to work with children, young people and families when commissioning the services to meet their sufficiency duties. This is the fundamental purpose of the requirement in [section 19 CFA](#) for local authorities to have regard to the views, wishes and feelings of children, young people and parents in everything they do under Part 3 CFA. It is also central to the joint commissioning arrangements required under [section 26 CFA](#) to secure the necessary education, health and care provision in each area. This in turn requires the local authority and its partners to consider the JSNA and the joint health and wellbeing strategy, which again disabled children, young people and families should have the opportunity to influence, including through parent forums. [Section 116A\(5\)\(b\) of the Local Government and Public Involvement in Health Act 2007](#) requires '*the people who live or work in [the] area*' to be involved in the production of every joint health and wellbeing strategy.

The concept of a 'Local Offer' did not emerge fully formed in the debates on the Children and Families Bill. The idea stemmed from the [Aiming High for Disabled Children review](#) in May 2007, which described a 'core offer' to 'encompass minimum standards on information, transparency, participation, assessment and feedback, to make it clear what entitlements and services disabled children, young people and their families can expect'. This is very similar to the statutory requirements of the 'Local Offer' under the CFA 2014 and the 2014 Regulations.

In March 2011, the Department for Education published departmental advice titled '[Short breaks for carers of disabled children](#)'. This advice supported the implementation of the Breaks for Carers of Disabled Children Regulations 2011 discussed in the [first issue of this bulletin](#).

The 2011 advice also described 'key areas of good practice' emerging from the Aiming High for Disabled Children programme. The first of these was that 'a "local offer" is

considered in order to provide families with access to some short breaks services without any assessment' – with further detail on this approach provided in the advice at paragraphs 1.8-1.9 and 4.5-4.6. This good practice never found its way into legislation or statutory guidance. However there is a clear steer in the 2011 advice that it is at least desirable for local authorities to allow access to Short Breaks on a non-assessed basis to meet relatively low level needs. As the advice notes, this approach is supported by the duty to work in partnership to safeguard and promote children's welfare found in [section 10 of the Children Act 2004](#).

It is essential however that where unassessed short breaks are available:

1. The criteria for access to those breaks is set fairly – examples given in the 2011 advice at para 4.6 of unfair criteria are special school attendance or receipt of higher rate Disability Living Allowance.
2. There is a straightforward route for disabled children, young people and families to access an assessment under the Children Act 1989 (for those under 18) or the Care Act 2014 (if over 18) if there is a possibility that the unassessed Short Breaks 'local offer' may be insufficient to meet the child or young person's needs – or if the family simply want a formal assessment to take place. There is a duty to assess every child 'in need' under the Children Act 1989, and all 'disabled' children are 'in need' – see [sections 17\(10\)\(c\) and \(11\)](#).

The statutory 'Local Offer' does not therefore precisely mirror the 'core offer' or 'local offer' which stemmed from the Aiming High for Disabled Children programme. While local authorities are legally required to publish information on Short Break services and how to access them, there is no statutory requirement to provide access to Short Breaks on an unassessed basis – although there is a clear steer that such an approach is in line with the government's policy and complies with good practice.

As such the new Local Offer requirement dovetails with the requirements of the Short Breaks duty covered in the [first issue of this bulletin](#). The Local Offer mandates publication of information about available services and supports the review of the quality and sufficiency of that provision generally. The Short Breaks duty and in particular the regulations made under it set the specific requirement for a sufficient level of high quality Short Breaks to be available. Compliance with both sets of legal duties should result in Short Breaks being made available to those disabled children, young people and families who need them.

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This article has been developed as part of the Short Breaks Partnership project and is intended for general information and should not be relied on as legal advice. Case-specific advice should be sought in any particular case.

The Short Breaks Partnership is a consortium of four organisations; Contact a Family, Council for Disabled Children, Action for Children and Kids. For more information about the project or to sign up to the quarterly Short Breaks Partnership bulletin please contact shortbreaks@ncb.org.uk