

Derbyshire County Council  
Legal Department

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Our Ref: AR/674

Dear Derbyshire County Council

**EXTREMELY URGENT**

**NOTICE OF INTENTION TO SEND PRE-ACTION PROTOCOL CORRESPONDENCE FOR JUDICIAL REVIEW**

We write on behalf of our client Charlotte ('Charlee') Jackson, by her mother and litigation friend Jennifer Jackson, in advance of a decision that we understand is due to be made by the Cabinet of Derbyshire County Council ('DCC') on 11 April 2024 in relation to the "Repurposing of Services at The Getaway and The Outback."

We have only been instructed in this matter yesterday (8 April 2024), ahead of a decision to be made in 2 days time (11 April), and this letter is therefore necessarily a summary of our client's position.

**Summary**

The decision to be made on 11 April, over such an important issue, follows a consultation that is plainly lacking in detail, and which lasted just 13 days. The consultation was obviously unlawful, for the reasons set out below, and any decision that is made in reliance of that unlawful consultation will also be unlawful. Should DCC proceed to make a decision on 11 April 2024 in relation to this issue, we confirm that we are instructed to send formal pre-action correspondence, challenging the lawfulness of that decision.

Instead, we invite DCC to not make a decision on 11 April. Should DCC wish to further explore this matter, we invite DCC to only do so after a lawful 12-week consultation, taking into account the flaws set out below with regards to the current consultation.

**Background**

DCC are well aware of the background to this matter, and so we will not repeat the full history within this letter. The proposal that is being made is to “repurpose Services for children with a disability at The Getaway and The Outback<sup>1</sup>.”

The Getaway is an Outstanding Ofsted rated home, which has been providing care for children with disabilities for nearly 15 years. It is described by DCC as providing<sup>2</sup>:

*“residential short breaks or shared care to disabled children and young people aged from 7 to 17-years-old. The Getaway aims to constantly improve the care provision it offers and consistently achieve the best possible outcomes, for all children and young people in its care.*

*The philosophy of The Getaway is that children with disabilities should be treated first and foremost as children, alongside that they may also have special needs because of their condition or impairment.*

*Our aim is to provide an experience of care that is sensitive to each child’s individual needs and to recognise, acknowledge and support any further need with regards their ethnicity, gender, culture, sexual, faith and spiritual identity.”*

The Outback is described by DCC as follows<sup>3</sup>:

*“The Outback offers a service to disabled children, young people, and their families in the Derbyshire area. The age range is 0 to 18-years-old. We’re not a residential provision but provide support in the family home or at The Outback building. We’re situated in the heart of Chesterfield, very close to the town centre with access to many facilities and community-based activities.*

*We’re inspected by the Care Quality Commission (CQC) and our last physical inspection was in November 2019 which gave us a ‘good’ judgement. We pride ourselves on our team, our values, beliefs, ethics, our commitment to provide the best outcomes and how we make a difference for the families that we support.*

*We have a team of 15 highly skilled workers that bring a range of experience to provide support that is person centred and child/young person focussed.*

*The main aim of The Outback service is to ensure that children and young people and their families are supported to avoid reaching crisis point and requiring the support from our residential settings and foster carers.”*

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<sup>1</sup><https://democracy.derbyshire.gov.uk/documents/s24747/Repurposing%20of%20Services%20at%20The%20Getaway%20and%20The%20Outback.pdf>

<sup>2</sup> <https://www.derbyshire.gov.uk/social-health/registered-care-services/disabled-young-people/the-getaway.aspx>

<sup>3</sup> <https://www.derbyshire.gov.uk/social-health/registered-care-services/disabled-young-people/the-outback.aspx>

It goes without saying that both the Getaway and the Outback are extremely valuable services to disabled children and to their parent/carers. DCC themselves stated in the report to Cabinet for 11 April 2024:

*4.1 Both the Getaway and the Outback are highly valued, well-established services which provide critical support to vulnerable children with a disability. Many Local Authorities rely on commissioned services from the private sector to meet the needs of this cohort of children, however Derbyshire County Council has chosen to provide the services internally for many years.*

Notwithstanding that they are “highly valued, well-established services which provide critical support to vulnerable children with a disability”, the proposal made to Cabinet on 11 April 2024 is:

*“to remodel The Getaway and The Outback services to reduce external placement expenditure for children with complex disabilities from April 2024 onwards ..... The proposal is to use The Getaway as a residential home for full time care for 3 children aged between 7-17 years. One bed will continue to be available for short breaks for children who are at high risk of full time admission and require a high level of care to meet their complex needs.”*

This in effect means reducing the short-breaks service at the Getaway for disabled children by 75% (4 beds down to 1).

In relation to the Outback, it remains entirely unclear to us what is actually being proposed, and what impact this will have. This is unsurprising given the flaws in the the 13 day consultation that has so far taken place. We address that in more detail below.

We wish to stress at the outset that our client’s mother accept the difficult financial position that DCC, and indeed almost every other local authority, are currently facing. That does not however mean that cuts from children’s services ‘need’ to be made; savings can be made elsewhere, the services can be run more efficiently, or indeed DCC could utilise its reserves to make up the shortfall or increase council tax. Consultees must be given a fair opportunity to influence DCC’s considerations in relation to these vital services.

#### Our client

Charlee currently receives 130 nights per year at the Getaway. Her mother states:

*She loves attending, where she gets to be a regular teenager. She has friends she socialises with there and an amazing Team around her that enables her to explore the wider world, and they're able to be far more adventurous than her parents are with the places they go to.*

*She's been to Animal Parks, Disney on Ice, The Cinema, Theme Parks, and lots of shopping and Recreational Parks. They regularly got to a local Pub for a meal and also to her favourite fast food places.*

*Charlee has never had the opportunity to go to a friend's house for tea, or on a school residential, or to family for a sleepover, and she gets all of this experience and so much more at The Getaway.*

*Charlee has been at The Getaway since Summer 2020 and has absolutely thrived. Her communication has massively improved, she's started using the toilet, she's much more adventurous with her food, she's better at feeding herself - all of which give her a much better quality of life, and will be a HUGE help for her 'care' in the long Term.*

Please note that we have also been contacted by the Chair of the Derbyshire Parent Carer Forum who has told us that the Forum:

*"are very concerned about how the consultation on proposed changes to respite services has been conducted. We expect lots of families who may be affected are not aware of the consultation. The local authority are not providing good information to all parent carers – including those not directly impacted today but likely will be in the future. It's very difficult for them and those who may be eligible for such services in the future, to know what's happening and the real impact on their children//young people."*

We understand that the consultation was hardly published, and the clear impression is that it was attempted to be passed with as little noticed as possible. That is also unfair and so unlawful.

We confirm that should the decision be made on 11 April, we anticipate being instructed to challenge that decision by a number of local affected families, including impacted families who have only recently learned that the consultation even took place.

#### The consultation

Our client's mother received an email completely out of the blue on 12 March (i.e. 12 days before the consultation closed) which stated as follows (our underlining):

#### *Getaway and Outback*

*We have just started a consultation about changes we are proposing to make to the Outback early help service and the short breaks service for children with disabilities at The Getaway building in Ilkeston. You can find this consultation on our website. As a family who uses these services we wanted to let you know about this consultation and give you the opportunity to have your say.*

*In common with authorities across the country, the council is facing budgetary pressures far greater than experienced before, due to factors*

beyond its control. These include dealing with higher than anticipated inflation and higher prices for fuel, energy and materials, meeting the cost of the national pay award set nationally but met locally, and the continued unprecedented increase in demand for vital adults' and children's social care services.

As well as a current forecast overspend for 2023-24, the council has a predicted shortfall of around £40m in its budget for the year ahead (2024-25) which has resulted in the savings proposals being put forward.

The changes are needed in order to support the council setting a balanced budget. Around £1.9m needs to be saved from the budget that pays for these services.

Currently we offer a range of different services for short breaks for children with disabilities. They include:

- Stays with a foster family, which is called link care
- Direct payment or personal budget to fund overnight care wherever the family choose
- Overnight short breaks in other council buildings, including The Getaway or those run by private companies
- Occasional or one-off activity breaks

Access to overnight short breaks at The Getaway are assessed on a case-by-case basis. The Getaway is able to accommodate up to 4 children per night, over 6 nights per week.

We are considering two options for the short breaks service at The Getaway:

1. Stop providing short breaks at The Getaway. We'd help parents of those using the service to look for alternatives.
2. Reducing the number of short breaks available at The Getaway, by repurposing 3 out of 4 of the beds to full-time, long-term residential care for 3 children looked after by the local authority and continuing to provide one bed in the home for short breaks for 6 nights a week. Parents of those children currently using The Getaway short break service would be offered support to find alternative provision within the community.

We realise that these proposed changes could your family and would encourage you to take part in the consultation, which runs until 24 March. You can find the consultation on our website.

It should be immediately obvious from this email that:

1. The impact on the closure of the Getaway is entirely unclear. The statements that “We'd help parents of those using the service to look for alternatives” and “Parents of those children currently using The Getaway short break service would be offered support to find alternative provision within the community” are so vague as to be almost meaningless. What does it mean that DCC would ‘help to look for alternatives’? What other services are available? Do they have capacity? Do they offer a like-for-like service? If not, how will assessed needs continue to met? What will this mean in reality for affected families? Will there be a transition period? Will staff be retained? Will all children attend any new service so that they can maintain their friendships?

Consultees simply have no idea the answer to any of these questions, and so are prevented from giving an intelligent response to the consultation.

2. The proposal with regards to The Outback, remarkably, is even less clear. The above email (and consultation documents) are almost entirely silent on what is proposed, what the changes will be, or how that will impact on any user of the service. It could hardly be any clearer that consultees are prevented from giving an intelligent response to the consultation, when they are in the dark as to what is being proposed and what the impact is expected to be.
3. It is silent on why DCC propose to make these changes as opposed to making savings elsewhere. In other words, what alternative options were considered but discarded? Consultees are entitled to know this in order to give an intelligent response.
4. The email/consultation is also misleading when it states that “Around £1.9m needs to be saved from the budget that pays for these services.” This is a decision that DCC have taken, and a decision that DCC could also decide not to take. But any fair-minded reader of the email would think that these cuts must (‘need’) be made, and therefore would respond to the consultation on that misleading basis. In fact, DCC could decide to make these savings elsewhere, to raise council tax, or to dip into reserves. But this is not explained to consultees anywhere in the document or consultation.
5. It is hopeless to expect consultees to be able to properly respond in 12 days to an issue of this importance.

The email directs the recipient to the DCC website.<sup>4</sup> This supposedly sets out “What this consultation is about” but simply repeats all the issues set out above. It again provides no explanation whatsoever for users of The Getaway, beyond “We'd help parents of those using the service to look for alternatives” or “Parents of those children currently using The Getaway short break service would be offered support

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<sup>4</sup><https://www.derbyshire.gov.uk/council/have-your-say/consultation-search/consultation-details/outback-early-help-service-and-the-getaway-short-break-provision.aspx>

to find alternative provision within the community” and is again entirely silent on what the proposal is with regards to the Outback.

The webpage confirms that the consultation was open for 13 days. A copy of the questionnaire that accompanied it is no longer available, and we request that you send us a full copy of that questionnaire by return. We are instructed however that only 2 questions enabled a 'Text' answer, and that the rest were multiple choice. No option was given to advocate for 'no change.'

As far as we are aware there was also no accessible version of the consultation -or alternative ways to respond such as email/hard copy/easy read versions etc, notwithstanding that it relates to disability services.

Our client's mother was unable to give a full (or to use the language in the caselaw, an “intelligent”) response to the consultation given the lack of information that was provided, and did not have the time to properly consider the matter and provide a full response in the 13 days that were afforded to her and other consultees.

Our client's mother has made a formal complaint in relation to the way that this has been conducted, and awaits a reply.

#### The law on Consultation

Public bodies have a duty to consult fairly, as part of the broader common law duty of procedural fairness. There is only one standard for 'fair' consultation, whether or not the consultation was required by statute or was embarked on voluntarily by the public body.

The degree of specificity with which the public authority should conduct its consultation depends on who it is consulting with. For example, greater care must be taken where consultation is with members of the public who might not readily understand information or who are economically disadvantaged. So too, fairness requires a more thorough consultation than would normally be required when a local authority is considering depriving someone of an existing benefit or advantage. Critically, fairness may require that *“interested persons be consulted not only upon the preferred option but also upon arguable yet discarded alternative options”*: R(Moseley) v London Borough of Haringey [2014] UKSC 56 at paras 26-28.

All the above criteria apply to the current consultation.

The local authority will be aware that any consultation must comply with the “Gunning criteria” (from R v Brent London Borough Council, ex p Gunning (1985) 84 LGR 168), that the consultation must take place when the proposal is still at a formative stage; sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response; adequate time must be given for consideration and response; and the product of consultation must be conscientiously taken into account.

We reserve our position as to whether the consultation took place when the proposal is still at a formative stage. It is perfectly clear in any event that sufficient reasons have not been put forward for the proposal to allow for intelligent

consideration and response, and 13 days is very clearly not adequate time for consideration and response. The consultation is therefore unlawful, and any decision made in reliance upon it will also be unlawful.

### **Next steps**

We request that DCC:

1. Acknowledges that the current consultation is flawed and will be withdrawn;
2. Agrees not to take a decision with regards to the Outback early help service and the Getaway short break provision on 11 April, and to continue to make both services available to current and new users; and
3. Provides an assurance to us that should DCC wish to further explore this matter, it will only do so after a lawful 12-week consultation, taking into account the flaws set out above with regards to the current consultation.

Please also provide us with a copy of the questionnaire attached to this consultation, and any information upon which DCC intends to rely, which is not already referred to in this letter.

Finally, should DCC, notwithstanding all that is stated above, make a decision on 11 April, we request that you:

4. Confirm the decision to us directly, within 24 hours of that decision;
5. Provide us with any minutes of the meeting as soon as they are available; and
6. Confirm the proposed timeline and transition plan for any current users of either service.

Please confirm safe receipt of this letter by **4pm on 10 April 2024**.

We look forward to hearing from you shortly

Yours faithfully



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**ROOK IRWIN SWEENEY LLP**