

Delegated Decisions by Cabinet Member for Children, Young People & Families

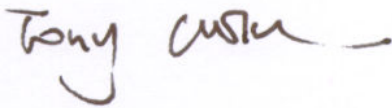
***Tuesday, 10 August 2010 at 3.00 pm (or on the rising of
Cabinet which ever is the later)
County Hall***

Items for Decision

The items for decision under individual Cabinet Members' delegated powers are listed overleaf, with indicative timings, and the related reports are attached. Decisions taken will become effective at the end of the working day on Wednesday 18 August 2010 unless called in by that date for review by the appropriate Scrutiny Committee.

Copies of the reports are circulated (by e-mail) to all members of the County Council.

These proceedings are open to the public



Tony Cloke
Assistant Head of Legal & Democratic Services

August 2010

Contact Officer: **Sue Whitehead**
Tel: (01865) 810262; E-Mail: sue.whitehead@oxfordshire.gov.uk

Note: Date of next meeting: 7 September 2010

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named on the front page, but please give as much notice as possible before the meeting.

Items for Decision

1. Declarations of Interest

2. Questions from County Councillors

Any county councillor may, by giving notice to the Proper Officer by 9 am on the working day before the meeting, ask a question on any matter in respect of the Cabinet Member's delegated powers.

The number of questions which may be asked by any councillor at any one meeting is limited to two (or one question with notice and a supplementary question at the meeting) and the time for questions will be limited to 30 minutes in total. As with questions at Council, any questions which remain unanswered at the end of this item will receive a written response.

Questions submitted prior to the agenda being despatched are shown below and will be the subject of a response from the appropriate Cabinet Member or such other councillor or officer as is determined by the Cabinet Member, and shall not be the subject of further debate at this meeting. Questions received after the despatch of the agenda, but before the deadline, will be shown on the Schedule of Addenda circulated at the meeting, together with any written response which is available at that time.

3. Petitions and Public Address

4. Early Years Free Entitlement - Revised Provider Agreement (Pages 1 - 12)

Forward Plan Ref: 2010/139

*Contact: Annie Davy, Strategic Lead Early Years, Raising Achievement Services
Tel: (01865) 815493*

Report by Director for Children, Young People & Families (**CMDCY4**).

The Early Years Provider Agreement is a binding agreement with over 330 private and voluntary providers of the free entitlement of early education for 3 and 4 year olds. It protects the Council in terms of its statutory duty to deliver the entitlement and the use and distribution of c. £16million funding which is passported to early years settings to support over 8,000 children per annum.

The Provider Agreement has been updated following publication of the revised national Code of Practice and local consultation. This report requests approval of the new Agreement and the circumstances and process for removing providers from the early years register.

The Cabinet Member for Children, Young People & Families is RECOMMENDED to approve the revised Provider Agreement as attached at Annex 1 and to delegate to the Director for Children, Young People & Families decisions on any future amendments of an operational nature which may be needed.

Division(s): All

CABINET MEMBER FOR CHILDREN, YOUNG PEOPLE & FAMILIES 10 August 2010

EARLY YEARS FREE ENTITLEMENT – REVISED PROVIDER AGREEMENT

Report by Director for Children Young People & Families

Introduction

1. The Local Authority has statutory responsibilities through the Childcare Act 2006 and associated guidance to ensure sufficiency of places for the free entitlement for all 3 and 4 year olds. From September 2010 the entitlement has been extended to 15 hours per week. The Provider Agreement is the mechanism by which the County Council distributes funding and ensures compliance with statutory and legal responsibilities.

Consultation and Revision

2. The revised national Code of Practice published earlier this year sets out the framework for agreement between the early years providers and the local authority. The Local Authority consulted with all providers on the Code of Practice between 1st of June and 21st June 2010. A full report on the consultation responses is available on the Council's internet site www.oxfordshire.gov.uk/eycopcr
3. The response rate was disappointing with a 5% return (19 responses). The consultation report and subsequent revised Provider Agreement was taken to the Early Years Working Group of the Schools Forum on July 20th for full discussion where several changes were made in response to advice from stakeholder representatives on that group. The final proposed version of the agreement for September 2010 – March 2011 is attached at Annex 1, and the process for removing a provider from the Early Years Register is at Annex 2.

Formula Funding

4. The total budget concerned is circa £16 million of public funding which the County Council passports directly to some 350 private, voluntary and independent settings, based on take up of the free entitlement by approximately 8,000 children per annum. The Single Funding Formula will be introduced from April 2011 at which point further revisions to the funding agreement may be needed, to include maintained sector nursery classes and nursery schools.

Financial and Staff Implications and Risks

5. There are no direct staffing or budget implications for the County Council because all nursery education is maintained, private and voluntary providers is entirely funded from the Dedicated Schools Grant or other specific grants.
6. However several private and voluntary providers have expressed concern that current funding does not meet their costs of providing the places. There is some evidence that the current economic situation and the increase of the free entitlement to 15 hours is impacting heavily on some providers. 14 providers have withdrawn from the funding scheme over the last year and 4 new providers have been registered. If places are withdrawn there is a risk the Council's duty to ensure sufficient free places for all eligible children and potentially the need to create additional places within the maintained sector. This situation is being closely monitored by officers through regular sufficiency assessments.

Equality Impact Assessment

7. This policy has a primary purpose to ensure that providers do not disadvantage particular groups of children and to ensure access to the free entitlement by all. It is written to ensure providers are inclusive and do not make charges or hold discriminatory policies or practices which might prohibit any child from his or her free entitlement. An Equality Impact Assessment has been carried out and officers will monitor take up of provision by specific minority groups.

RECOMMENDATION

8. **The Cabinet Member for Children, Young People & Families is RECOMMENDED to approve the revised Provider Agreement as attached at Annex 1 and to delegate to the Director for Children, Young People & Families decisions on any future amendments of an operational nature which may be needed**

MEERA SPILLET
Director for Children, Young People & Families

Background papers: Code of Practice for Local Authorities on Delivery of Free Early Years Provision for 3 & 4 year olds. September 2010. The new Code of Practice 2010 can be retrieved from:
<http://www.dcsf.gov.uk/everychildmatters/resources-and-practice/IG00689/>

Contact Officer: Annie Davy – Strategic Lead Early Years
Tel: (01865) 815493
Debbie Rouget – Early Education Development Manager
Tel: (01865) 810617

August 2010



**NURSERY EDUCATION FUNDING AGREEMENT
September 2010 to April 2011**

Oxfordshire County Council (the 'Council') has a duty to ensure that all children have access to high quality early years provision that helps them reach their potential. It fulfils this duty through a commitment to partnership working with over 600 early years providers including schools, voluntary pre-schools, private sector nurseries and accredited childminders. The Council is required to maintain and keep up to date a register of providers eligible to deliver the free early years entitlement.

This agreement sets out the conditions set by the Council under the framework of the Code of Practice for Local Authorities on the delivery of Free Early Years Provision for 3 & 4 year olds¹ and the Council supports providers to achieve flexible, high quality provision which meets the needs of parents and children.

Full name of establishment (the 'Provider')	Address (registered office or principal office): Post code:
Name of contact and position	E mail:
Provider's registered number (if applicable):	Tel:
Correspondence address (if different from above)	

¹ The new Code of Practice 2010 can be retrieved from:
<http://www.dcsf.gov.uk/everychildmatters/resources-and-practice/IG00689/>

CONDITIONS FOR INCLUSION IN OXFORDSHIRE'S NURSERY EDUCATION FUNDING SCHEME

1. Provision

The Provider agrees to:

1.1 Enable the Council to provide, free of charge at the point of delivery, the core entitlement of 15 hours a week for up to 38 weeks a year.

1.2 Not oblige parents to purchase additional hours, including over lunch time, in order to secure free provision. The Provider can charge for a cooked meal as long as parents are happy to pay for this. Where the free entitlement covers a lunchtime period, parents must be offered the option of providing a packed lunch for the child, in order to ensure the option of a free entitlement at the point of delivery.

1.3 Consult with parents on how they want to access the flexible free entitlement and deliver the entitlement in a way that reflects parent demand as much as possible, as well as the highest possible quality for children.

2. Information and data

The Provider agrees to:

2.1 Provide data, including Nursery Education Funding headcount, annual census returns and Early Years Foundation Stage Profile returns (where applicable) within the time-scales set by the Council and the Department for Education.

2.2 Hold fully completed and up to date parental declaration forms, which relate to each child receiving funding and the term in which the funding is to be provided and retain these forms for the following academic year for audit purposes.

2.3 Keep accurate and up to date attendance registers.

2.4 Provide the Council with accurate contact details and other required information and ensure that any changes are notified and kept up to date.

2.5 Allow the publication of the provider's address and contact number on the Council's website and www.direct.gov.uk, and on lists published for parents seeking a nursery education place.

3. Quality

The Provider agrees to:

3.1 Comply with the Early Years Foundation Stage Statutory Framework and Guidance from Ofsted.

3.2 Comply with the Code of Practice for Special Educational Needs (2001) and the requirements of the Disability Discrimination Act as having an "anticipatory duty" to

be prepared for any disabled child who might attend the setting as well as identifying, including and supporting those children who have special educational needs/ complex needs.

3.3 Comply with all relevant statutes, enactments, regulations and codes of practice or other similar instructions in the delivery of early years childcare.

3.4 Maintain an up to date Special Educational Needs policy in line with the Special Educational Needs Code of Practice and comply with the same.

3.5 Identify a person/s qualified to level 3 or above who works as a Special Educational Needs Coordinator and an Equal Opportunities Coordinator (SENCo and EOCo) from within the staff (one staff member might take on both roles), to take responsibility for developing and implementing policies within the setting.

3.6 Pay full regard to all equal opportunities legislation and have policies and practices that ensure equality of access and opportunity to all three and four-year-olds.

3.7 Demonstrate a proactive approach to continuous quality improvement through self-evaluation and action planning.

3.8 Positively engage with the County Council's Early Years Staff (Early Years Advisory Teachers and Early Years SEN inclusion teachers) as set out in the Oxfordshire Quality Improvement Scheme. The latest version of this will be on the early years pages of www.oxfordshire.gov.uk/earlyyearseducation from September 1st 2010.

3.9 Respond to recommendations arising from monitoring visits and integrate such recommendations within the Provider's own quality improvement processes. This may include evidence of continued professional development and targeted training.

3.10 Where settings are categorized by Ofsted as satisfactory or inadequate, they will receive additional support from early years Advisory staff as set out in the Oxfordshire Quality Improvement Strategy with an expectation that they will reach a quality standard of 'good' or above within a reasonable timescale.

3.11 Ensure that all staff details are entered onto the 'CWDC (Children's workforce Development Council) qualifications database. These details must be updated as staff change). For more details please go to <http://eypquals.cwdcouncil.org.uk/public> Alternatively the Provider may use its own electronic system to make equivalent information available to the Council on request.

4. Partnerships

The Provider agrees to:

4.1 Work in partnership with parents and provide them with any relevant information or advice about their children's progress and grant entitlements.

4.2 Work collaboratively with other early years providers locally, particularly around transition to school, and support local partnership activities.

4.3 Notify the Council of any partnership arrangements in place in relation to the flexible offer prior to applying for funding and secure the Council's agreement on the funding elements of the partnership.

4.4 With parents' agreement, transfer records of individual children to receiving schools, including those records relating to achievements and identified Special Educational Needs.

5. Safeguarding

5.1 Have accurate and up to date policies and procedures in line with statutory guidance and the Oxfordshire Safeguarding Children Board's policies: <http://www.oscb.org.uk/wps/wcm/connect/occ/OSCB/Home/> and comply with such policies and procedures.

5.2 Follow 'safer recruitment' procedures when recruiting staff. Contact CWDC for guidance and training opportunities <http://www.cwdcouncil.org.uk/safeguarding>

6. Financial

The Provider agrees to:

6.1 Make records relating to the nursery education funding received available to the Council's administrators and auditors on request.

6.2 Ensure invoices to parents are clearly set out, showing which aspects of the provision are paid for and which are part of the free entitlement.

6.3 Ensure that all Nursery Education Funding claims requested by the Council are returned by the deadline stated. Any late or incomplete returns may incur an administration charge or may result in funding being suspended.

6.4 If an interim payment is made which is not supported with actual claims for that amount of funding or higher, the Provider will be required to return any excess funding within 28 days of receiving an invoice for the outstanding amount.

6.5 The Provider must inform the Council if and when it has been granted an exemption to any elements of the Early Years Foundation Stage, or if any of the children have been granted an exemption. The Council will agree to fund exemptions in some cases and each will be agreed on its merits.

7. Council's Obligations

The Council agrees to:

7.1 Make prompt payments in respect of children entitled to a place in line with claims received following Count Day in September 2010 and January 2011.

- An interim payment is available to providers who choose it. This will be paid by BACS in the first week of term based on 50% of the average claim amount for the previous financial year.
- A final payment based on claims made by the setting according to children on register on the specified Count Day is paid by BACS, less any interim payment

or overpayments carried forward from previous terms. This is payable to settings approximately 6 weeks into term.

7.2 Continue to fund children through short term absences but reserves the right to withdraw funding where absence is recurring or for extended periods of six weeks or more, unless there are extenuating circumstances.

7.3 not reclaim the funding if a child leaves or transfers to another provider unexpectedly after Count Day on the understanding that the Providers to offer free hours to eligible children joining after Count Day.

7.4 Make available appropriate information, advice and guidance for early years practitioners delivering the entitlement.

7.5 Offer support to maintain and enhance quality in relation to best practice in the delivery of the Early Years Foundation Stage.

7.6 Publish its Quality Improvement Scheme on the Internet.

7.7 Continue to consult through the Early Years Working Group of the Schools Forum on the implementation of the Single Formula Funding from March 2011 and any supplements that may be payable in respect of quality and flexibility.

7.8 Provide support to practitioners in their professional development through relevant and appropriate training programmes, with funding support where possible.

8 Breach, expiry and termination of this agreement

8.1 This agreement commences on 1st September 2010 and expires on 31 March 2011.

8.2 In the event of concerns or a breakdown of this agreement, the Council and the Provider will use all reasonable endeavours to reach an amicable agreement

8.3 In the event of serious or persistent breach of this agreement, the Council shall be entitled to terminate the agreement according with the process set out in the policy for the removal of a Provider from Oxfordshire's Early Years Register.

8.4 The Council may reduce or withdraw the funding to the extent any funding received by the Council from a third party for purpose of funding this early years provision is reduced or withdrawn.

8.5 The Council shall be entitled to terminate this agreement immediately by giving written notice to the Provider at its registered or principal office address (as shown on the front page of this agreement unless it has been notified in writing of another address by the Provider) if (a) in the proper opinion of the Council there has been a material or persistent breach of this agreement on the part of the Provider; or (b) the Provider has failed or is failing to deliver the early years childcare to the required quality standards; and/or (c) where it becomes apparent to the Council that the Provider has made or is making use of the funding for a purpose unconnected with the subject matter of this agreement and in such circumstances the Provider shall promptly repay to the Council the amount of any funding paid to the Provider under the agreement to date.

9 Insurance

9.1 The Provider shall at all times maintain public liability and employer's liability insurance cover.

9.2 The Provider shall supply to the Council within 14 days of request a copy of all insurance policies, cover notes, premium receipts or such other documents as may satisfy the Council that such insurance is in place.

10 Law and jurisdiction

10.1 This agreement shall be governed exclusively by the jurisdiction of England and Wales and interpreted in accordance with English law.

11 General

11.1 A reference to any act of Parliament, order, regulation, statutory instrument or similar, shall include a reference to any amendment or replacement of it. Reference to any act of Parliament shall also include any subsidiary legislation made under it.

11.2 This agreement represents the entire understanding between the parties in relation to the subject matter of the agreement. If any of the terms become or are declared by a court of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall in no way impair or affect any other terms all of which shall remain in full force and effect.

11.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to the agreement.

We hereby agree to the terms of this agreement:

For and on behalf of the Provider:

SIGNED by [*name*]

Signature

Position

(and duly authorised signatory)

Please sign and return this agreement to:

**NEF Team, Early Learning and Childcare
Oxfordshire County Council, 1st Floor, County Hall
New Road, Oxford OX1 1ND**

If you have any queries, please contact us on 01865 815765
Email earlyyears.education@oxfordshire.gov.uk

Removal of provider from Oxfordshire's Early Years Provider Register Policy and Appeal process

Updated July 2010



Background

Oxfordshire County Council has a duty to comply with the national Code of Practice on the provision of Free Nursery Education Places for 3 and 4 year olds.

All Providers of the free entitlement are required to be registered and inspected by Ofsted and meet minimum satisfactory standards and working towards good or outstanding outcomes.

Additional Local Authority requirements are set out in the **Provider Agreement**, which is updated annually and signed by all Providers in receipt of Nursery Education funding.

Oxfordshire's **Early Years Quality Improvement Scheme (QIPS)** sets out the advice and support that providers can expect from the Local Authority. When the Local Authority is notified of an inadequate Ofsted inspection outcome the setting will be categorized as needing 'high' support. This will include an immediate support visit from a senior member of the advisory team to help develop a post-Ofsted action plan and address the issues identified as requiring improvement. More than one inadequate Ofsted inspection within 3 years may lead to the Provider being removed from the Register and funding withdrawn

Notification of decision to withdraw funding and appeals procedure

1. Non-compliance with the terms of the Provider Agreement or an inadequate Ofsted inspection (care or education) will be referred to the relevant Head of Service or senior officer with delegated responsibility who will consider if the Provider has capacity to improve.
 - a) If the Provider has the capacity to improve they will be notified in writing and an action plan will be agreed with a senior member of the advisory team. If improvements are met within an agreed timeframe (max. 3 months), providers will remain on the register.
 - b) If the improvements are not met when the action plan is renewed, the Head of Service or senior officer will notify the Provider that it will be removed from the register. Funding will normally be withdrawn from the term following the notification. The dates for the beginning of term for the purposes of this policy are:
 - 1st September
 - 1st January
 - 1st April
2. The Provider will have 10 working days - unless otherwise stated - to appeal in writing against the decision. The appeal should be sent together with any supporting documents by recorded delivery to:

Head of Service
Early Years
Oxfordshire County Council
County Hall
New Road
Oxford
OX1 1ND

3. If an appeal is received within the stated timescale, the Head of Service or a senior representative of the local authority will confirm in writing the date, time and location of the independent appeal hearing. This hearing will be held within a maximum of 10 working days of receiving the notification of intention to appeal.
4. The Panel will be Chaired by the Head of Service and will also include a senior member of the Early Years advisory staff (or delegated representative) and an independent representative with early years expertise. None of the panel members will have been directly involved in making the original decision to withdraw funding. A member of the Oxfordshire County Council Legal Team may attend the hearing to give advice to the Panel.
5. The provider will be invited to attend the appeal hearing to make representations, and will be entitled to bring appropriate representatives agreed in advance by the Chair. Any written evidence or supporting documentation must be sent to the Chair no later than 1 full working day before the hearing, otherwise it will not be considered.
6. The appeal hearing will be an opportunity to review the basis of the decision, review any further evidence and discuss any representations made by the provider in relation to the decision to withdraw funding.
7. The provider will be notified in writing of the outcome of the appeal within 7 working days of the hearing. The notification will either:
 - a) Uphold the original decision to withdraw funding and require the provider to notify parents of this decision, or
 - b) Agree further actions to be undertaken, with a given timescale for the provider to meet the conditions of the grant and ensure that it meets the required standards of provision.
8. If, after having gone through the formal appeals process, the provider is not satisfied with the process, they can ask the Local Government Ombudsman to investigate. The Local Government Ombudsman is independent of the Council and investigates allegations of maladministration causing injustice to the person who has complained. The Ombudsman investigates complaints about most council matters including housing, planning, education, social services, and council tax.

Appeals Procedure Flowchart

