

Dated 1 January 2018

HAMPSHIRE COUNTY COUNCIL

EARLY YEARS EDUCATION PAYMENT FUNDING TERMS AND CONDITIONS

FINAL – V2.1

Schedules:

- 1 Delivery of Free Early Years Education
- 2 Early Years Education Funding Rate and Payment Schedule
- 3 Privacy Notice
- 4 Requirement of Early Years Education Payment
- 5 Procedure to Withdraw/Suspend Early Years Education Payment
- 6 Information for parents/carers on the Provider Special Educational Needs and Disabilities (SEND) Local Offer
- 7 Early Education and Childcare - Complaints Procedure

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CONTENTS

CLAUSE

1.	DEFINITION AND INTERPRETATION	1
2.	PURPOSE AND USE OF THE EARLY YEARS EDUCATION PAYMENT	5
3.	EARLY YEARS EDUCATION PAYMENTS.....	7
4.	ACCOUNTS AND RECORDS.....	9
5.	MONITORING AND REPORTING	9
6.	ACKNOWLEDGEMENT AND PUBLICITY	11
7.	INTELLECTUAL PROPERTY RIGHTS.....	12
8.	CONFIDENTIALITY	12
9.	FREEDOM OF INFORMATION	13
10.	DATA PROTECTION	14
11.	WITHHOLDING, SUSPENDING AND REPAYMENT OF EARLY YEARS EDUCATION PAYMENT.....	16
12.	TERMINATION.....	18
13.	ANTI-DISCRIMINATION	19
14.	HUMAN RIGHTS.....	19
15.	LIMITATION OF LIABILITY	19
16.	WARRANTIES	20
17.	INSURANCE	21
18.	DURATION.....	22
19.	ASSIGNMENT.....	22
20.	WAIVER	22
21.	NOTICES	22
22.	DISPUTE RESOLUTION.....	23
23.	NO PARTNERSHIP OR AGENCY	23
24.	JOINT AND SEVERAL LIABILITY.....	24
25.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	24
26.	ENTIRE AGREEMENT.....	24
27.	VARIATION.....	24
28.	GOVERNING LAW.....	24

PARTIES

- (1) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire SO23 8UJ (the '**Funder**').
- (2) The Approved Early Years Education Provider (the '**Provider**').

BACKGROUND

- (A) These Early years Education Payment Funding Terms and Conditions have been up-dated to include the requirements of the Early Education and Childcare Statutory Guidance March 2017 and to implement the extended 15 hour entitlement (30 hours).
- (B) The Funder has agreed to pay the Early Years Education Payment to the Provider to assist it in carrying out the Free Early Years Provision.
- (C) This Document sets out the terms and conditions on which the Early Years Education Payment is made by the Funder to the Provider.
- (D) These terms and conditions shall ensure that the Early Years Education Payment is used for the purpose for which it is awarded.

AGREED TERMS

1. DEFINITION AND INTERPRETATION

In these Terms and Conditions the following terms shall have the following meanings:

Agreement: means, this document together with any schedule attached. The Schedules form part of the Terms, any reference to the Early Years Payment Funding Terms and Conditions includes the Schedules. If there is inconsistency between any of the clauses of this document and the Schedules, the provisions in the Schedules shall prevail.

Commencement Date: 1 January 2018

Compliance Review: means the review undertaken by the Council to ensure that early years education is delivered in accordance with these Terms and Conditions. <http://www.hants.gov.uk/childrens-services/childcare/providers/eye-eysff>

Deprivation Funding: means the element of Early Years National Funding Formula (EYNFF) funding applied to claimed children where a

child's home address is from an area of identified deprivation as indicated by the Index of Deprivation Affecting Child Index (IDACI).

DfE Eligibility Criteria for two year olds: means the criteria used to determine eligibility for a funded 2 year old place as described by DfE and published on the Services for Young Children webpages.

<http://www.hants.gov.uk/childrens-services/childcare/providers/eye-eyesff/2yo-offer>

Early Years Foundation Stage (EYFS): means the statutory framework for the delivery of Early Years Education.

Early Years Education Payment: means the hourly rate as determined by the Early Years National Funding Formula (EYNFF) to be paid to the Provider in accordance with these Terms and Conditions.

Early Years Education Payment Period: means the period for which the Early Years Education Payment is awarded.

Early Years National Funding Formula (EYNFF): The Council's mechanism to determine the hourly rate of the early year funding payment as defined by the Early Years Education and Childcare Statutory Guidance for local authorities and the Early Years National Funding Formula operational guidance December 2016, published by the Department for Education.

Eligibility code means: the code or reference number provided by Her Majesty's Customs and Excise (HMRC) to parents who register for the Extended 15 hour entitlement (30 hours).

Extended Entitlement means: the additional 15 hours funding for up to 570 hours per eligible birthday year.

External Team Around the Setting (ETAS): means the meeting of the Provider and representatives of SFYC to review, discuss and "action plan" matters of quality improvement and/or other issues/concern as defined by OFSTED or in compliance with these terms and conditions.

Early Years Education (EYE) Manager: means the individual who has been nominated to represent the Funder.

Early Years Pupil Premium (EYPP): means additional funding introduced in April 2015 to support disadvantaged children receiving their free 3 year old or 4 year old EYE entitlement.

Free Early Years Provision: means the delivery of Early Years Education free of charge described in Schedule 1.

Funder: means Hampshire County Council (the Council) through its representatives of Services for Young Children

Funding: means the Early Years Education Payment provided by Hampshire County Council to the Provider after accepting the Provider's headcount claim for the relevant period.

Fundamental British values: means democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. The promotion of fundamental British values will be reflected in the EYFS and exemplified in an age-appropriate way through practice guidance.

Governing Body: means the governing body of the Provider including their directors or trustees.

Headcount: means the prescribed headcount date and process used to claim early years education funding by the Provider in order to receive the payment of Funding. All claims must be submitted by online data entry unless otherwise agreed by the funder.

Improvement Support Programme: means the Council's published development and learning support to Providers who receive "Inadequate" or "Requires Improvement" outcomes from their latest OFSTED inspection.

Local Development Team (LDT): means the local support team of Services for Young Children Officers and Commissioned Services. One of eight teams serving Basingstoke, Eastleigh and Winchester, East Hants, Gosport and Fareham, Hart and Rushmoor, Havant, New Forest and Test Valley.

OFSTED: means Office for Standards in Education or independent inspection body approved by the Secretary of State.

Maintained Provision: means a local authority school with a nursery unit, a local authority nursery school or local authority school.

Privacy Notice: means the required notice from the Funder that Providers display to inform parents of the purpose for data collection and how the Funder uses the information provided; and the notice required to be given to staff to inform them of the purpose of data collection for the EYNFF.

Prohibited Act: means:

- (a) offering, giving or agreeing to give to any servant of the Funder any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance under these terms and conditions or any other contract with the Funder; or

- (ii) showing or not showing favour or disfavour to any person in relation to these terms and conditions or any other contract with the Funder;
- (b) entering into this Agreement or any other contract with the Funder where a commission has been paid or has been agreed to be paid by the Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Funder;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Funder; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Funder.

Provider: means the early years and childcare organisation who has been accepted by the Funder as an approved Early Years Education Provider and issued with a Unique Reference Number to enable Early Years Education Funding payment to be made. A provider will be allocated with a Unique Reference Number if they are approved and are one of the following:

- (a) an early years provider other than a childminder registered on the OFSTED Early Years Register; or
- (b) a childminder registered on the OFSTED Early Years Register; or
- (c) a childminder registered with a childminder agency which is registered with OFSTED¹; or
- (d) a childminder agency which is registered with OFSTED¹; or
- (e) a school taking children aged three² and over and therefore exempt from registration with OFSTED as an early years provider.

¹ It will be determined and agreed locally whether childminders registered with a childminder agency are funded directly or through the childminder agency.

² Rising 3's are children who are registered pupils at a school and have not reached the age of three, but will do so before the end of their first term at the school. There are three cut off dates for the end of a school term: 31 August, 31 December and 31 March. Schools are currently required to register provision for 2 year olds who are not rising threes separately with Ofsted.

SEND Local Offer: means the Provider's published information about services available for children and young people from birth to 25 who have special educational needs and/or disabilities (SEND); and the guidance Services for Young Children publishes outlining how Hampshire expects Providers to approach the meeting of needs for children with SEND

Services for Young Children (SFYC): means the section of the Council's Children's Services Department whose work aims to raise the quality of provision and improve outcomes for young children through a range of services for early years and childcare Providers and their families/carers.

Standard offer: means offering the early years education entitlement of up to 15 hours per week over any 38 weeks of the year. There is no requirement for Providers to deliver early years education places in line with Hampshire's maintained school term dates.

Stretched offer: means offering the early years education entitlement of less than 15 hours per week and over more than 38 weeks.

Task: means the online process issued by the Funder to the Provider for claiming Early Years Education funding.

Terms and Conditions: means this document together with any schedule attached. The Schedules form part of the Terms, any reference to the Early Years Education Payment Funding Terms and Conditions includes the Schedules.

2 Year Old Offer: The free early years education entitlement for children aged 2 who meet the Department for Education (DfE) published Eligibility Criteria and have been approved by the Funder as eligible.

2. PURPOSE AND USE OF THE EARLY YEARS EDUCATION PAYMENT

- 2.1 The Provider shall use the Early Years Education Payment for the delivery of the Free Early Years Provision and in accordance with the terms and conditions set out in this document.
- 2.2 The Provider shall not make any significant change to the Free Early Years provision which may affect the Funding, or its compliance with the Terms and Conditions of this Agreement without the Funder's prior written agreement. In the event of any liabilities arising at the closure, removal, or suspension of the Free Early Years provision, including (but not limited to) any redundancy liabilities for staff employed by the Provider to deliver the Free Early Years provision, these liabilities must

be managed and paid for by the Provider through other resources available to the Provider and not through the Early Years Education funding.

2.3 Providers in receipt of additional funding such as deprivation (IDACI) funding that has been applied to the Early Years Education Payment and/or Early Years Pupil Premium, (EYPP) must be able to demonstrate when requested how the funding was used to improve outcomes for children attending the provision. The types of expenditure activity that it could be used are, for example the following, although this list is not, an exhaustive list:

- (a) staffing to support individual children;
- (b) staffing to support dialogue and discussion with parents;
- (c) resources to support individual children;
- (d) individual staff training to support an area of need identified for one or more children at the Provider – e.g. – attachment, identified SEN need, toileting, child development, speech delay;
- (e) whole staff training to meet a broad need as identified for a number of vulnerable children – e.g. attachment, language and communication difficulties;
- (f) provision of external specialist support;
- (g) staff release to liaise with specialist provision or other professional team or support agency;
- (h) staff release to support childcare voucher and working tax credit claiming;
- (i) research materials for staff development;
- (j) provision for outdoor resources;
- (k) transition activities – staffing costs to support activities taking place;
- (l) focussed activities or interventions for individuals and groups related to priority needs – such as service families needs, speech and language;
- (m) meals and additional snacks.
- (n) Providers may wish to work with other settings to pool their additional funding, for example, to support staff training; by employing specialists for development or need within the setting

or for individual children where those have been identified.
Further information can be found on the Services for Young Children website:

<http://www.hants.gov.uk/childrens-services/childcare/providers/eye-eyeff/eypp>

3. EARLY YEARS EDUCATION PAYMENTS

- 3.1 The Early Years Education Payment funding hourly rate will be calculated according to the Funder's published Early Years National Funding Formula (Schedule 2).
- 3.2 Subject to clause 11, the Funder shall pay the Early Years Education Payment to the Provider [in three instalments] on approval of submission and approval of an Early Years Education Payment claim in accordance with Schedule 2.
- 3.3 No Early Years Education Payment shall be paid unless and until the Funder is satisfied that such payment will be used for the approved expenditure in the delivery of the Free Early Years Provision.
- 3.4 The Early Years Education Payment shall be paid into a bank account in the name of the Provider which must be an ordinary business bank account. (In the case of a sole trader or partnership the bank account it is recommended the bank account be separate from their personal bank account/s)³.
- 3.5 The Provider shall repay to the Funder any money incorrectly paid to it either as a result of an administrative error or otherwise within 10 working days. This includes (but is not limited to) situations where either an incorrect sum of money has been paid or where Early Years Education Payment monies have been paid in error before all conditions attaching to the Early Years Education Payment have been complied with by the Provider.
- 3.6 The Provider shall repay to the Funder within 20 working days (and without the requirement that the Funder demands such payment first) any Early Years Education Payment monies for children claimed should

³ It is good practice for any business to have a separate bank account for transactions that occur in delivering a particular service/business activity. Where a business account is not available, such as through an independent childminder or a childminder of a childminder agency or a sole trader using their personal bank account, the provider must understand that for any audit purposes it is the personal bank account that will need to be reviewed by the Funder.

the Provider cease trading, be suspended or the agreement terminated during a funding period.

- 3.7 When a child leaves for whom a claim has been submitted and paid beyond the final date of attendance for example mid funding period, the Provider must, when the next “In Period adjustment task” for the funding period is issued, enter the leaving date of the child and ensure the total hours claimed in the period for the child are correct. The Provider must not discount/or reduce in anyway the amount of remaining balance of the funding period to be transferred through such items as notice periods, when entering a leaving date.
- 3.8 The Provider should not retain Funding for children who cease to attend their setting.
- 3.9 In accordance with paragraph 3.7, it is the responsibility of the Provider to establish (from the parent or carer) the setting where a child may have previously attended in order to clarify the hours remaining available to be claimed in the funding period. In exceptional circumstances, for example, personal safety reasons, a parent may not wish the provider to disclose where they have moved to, providers may contact the Funder for information relating to a child’s EYE claim.
- 3.10 If the Provider receiving funding is a childminder agency, the full amount of the EYE funding paid to the childminder agency by the Funder must be passed to the childminders delivering the early education places.
- 3.11 The Provider should ensure that claims are only made for eligible children and that reasonable care is taken to submit correct and accurate information for their Early Years Education Funding claim. The provider is required to check original copies of documentation to confirm a child has reached the eligible age on initial registration for the free entitlements. The provider can retain paper or digital copies of documentation to enable the Funder to carry out audit and fraud investigations if required. Where Providers retain a copy of documentation this must be stored securely and deleted when there is no longer a reason to keep the data according to the data privacy policy of the Provider⁴ The Provider must ensure they submit a claim for the

⁴ Providers should check evidence of the child’s age eligibility e.g. birth certificate/passport and record that they have done so. They should ensure any information provided to the Funder is kept up to date, such as change of address.

correct number of hours relating to either the standard or stretched offer attendance taking account of any split claim with another provider.⁵

- 3.12 The Provider must ensure that children are not prevented from accessing the free hours claimed. Where a Provider considers there is a justified reason for such exclusion, then, the Provider must first seek agreement from the Funder before any exclusion from the EYE hours.

4. ACCOUNTS AND RECORDS

- 4.1 The Early Years Education Payment shall be shown separately in the Provider's accounts and records.
- 4.2 The Provider shall keep accurate and up-to-date accounts and records of the receipt and expenditure of the Early Years Education Funding Payment received.
- 4.3 The Provider shall keep all invoices, receipts, and accounts and any other relevant documents relating to the claiming and expenditure of the Early Years Education Funding Payment for a period of at least six years following receipt of any Early Years Education Funding Payment to which they relate. These should include claiming and expenditure of EYE funding for any child attending the provider at any time during any funding period. The Funder shall have the right to review, at the Funder's reasonable request, the Provider's accounts and records that relate to the expenditure of the Early Years Education Funding Payment and shall have the right to take copies of such accounts and records.
- 4.4 The Provider shall comply and facilitate the Funder's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Funder.

5. MONITORING AND REPORTING

- 5.1 The Funder may monitor the Provider as follows for example, but not an exhaustive list, in the following ways:
- (a) Routine sample basis of 10% of provision;

⁵ It is the responsibility of the Provider to explain the free early years education offer to parents; to manage the maximum of 570 hours over the child's eligible birthday year; to liaise with other providers as necessary where the weekly hours claimed are split with another setting.

- (b) Checks and assessment of claims for funding;
 - (c) Early Years National Funding Formula data collection;
 - (d) New Provider/re registration processes;
 - (e) Parental complaints.
- 5.2 The Provider shall on request provide the Funder, with such further information, explanations and documents as the Funder may reasonably require in order for it to establish that the Early Years Education Payment has been used for the purpose it has been provided for and in accordance with these terms and conditions.
- 5.3 The Provider shall permit any person authorised by the Funder such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Provider's fulfilment of these Terms and Conditions and shall, if so requested, provide the relevant oral or written information required.
- 5.4 The Provider shall permit any person authorised by the Funder for the purpose of monitoring and reporting to visit the Provider at any time during the period of the agreement to monitor the delivery of the Free Early Years Provision.
- 5.5 The Provider must provide information to the Funder when requested, including:
- (a) accurate data to support the Headcount and claim;
 - (b) accurate data to determine the Early Years National Funding Formula hourly rate;
 - (c) times available to parents;
 - (d) scale of fees and charges;
 - (e) sample invoice;
 - (f) early years education parent forms;
 - (g) evidence of registered children and their attendance record, , audited accounts;
 - (h) staff qualifications and training records.

- 5.6 The Provider must provide timely and accurate information to the Funder when requested for completion of the statutory Early Years Census for the purpose of ensuring funding is received from the DfE for the eligible children.

6. ACKNOWLEDGEMENT AND PUBLICITY

- 6.1 The Provider shall acknowledge the Early Years Education Payment in its annual report and accounts, including an acknowledgement of the Funder as the source of the Early Years Education Payment.
- 6.2 The Provider must provide clear and transparent invoicing to parents that clearly shows the hours of Free Early Years Education separately from any chargeable hours and/or other chargeable services agreed with the parent for each invoice period.
- 6.3 The Provider must publish clear information on how the Free Early Years Education is delivered in the setting, as informed to the Funder through the EYNFF process. This must be published in the Provider's prospectus/contract documentation, included in any Provider website or appropriate publication and Hampshire County Council's Family Information Directory. The Provider must inform parents of their child's entitlement and how it can be taken up and how they can engage in the delivery of improved outcomes for their child. Any changes to the delivery of the EYE must be reported to, and agreed by, the Funder prior to any implementation.
- 6.4 The Provider must ensure its published information is clear about fees for any additional hours the parent may wish to have and/or charges for additional services e.g. meals, non Early Years Education services (such as ballet/languages/swimming etc., which must be delivered outside of the Early Years Education times).
- 6.5 The Provider shall acknowledge the support of the Funder in any materials that refer to the Free Early Years Provision and in any written or public presentations about the Free Early Years Provision. Such acknowledgements (where appropriate or as requested by the Funder) shall include the Funder's name and logo (or any future name or logo adopted by the Funder) using the templates provided by the Funder from time to time.

- 6.6 The Provider shall comply with all reasonable requests from the Funder to facilitate visits, provide reports, statistics, photographs and case studies relating to the Free Early Years Provision.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Funder and the Provider agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Funder or the Provider before the Commencement Date or developed by either party during the Early Years Education Payment Period, shall remain the property of that party.
- 7.2 Where the Funder has provided the Provider with any of its Intellectual Property Rights for use in connection with the Free Early Years Provision (including without limitation its name and logo), the Provider shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Funder.

8. CONFIDENTIALITY

- 8.1 Subject to clause 9 (Freedom of Information), each party shall during the term of this Agreement and thereafter business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.
- 8.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to business, technical or commercial information which:
- (a) at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
 - (b) is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or

- (c) is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

9. FREEDOM OF INFORMATION

- 9.1 The Provider acknowledges that the Funder is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).
- 9.2 When requested to do so by the Funder, the Provider will assist and cooperate with the Funder (at the Provider's expense) to enable the Funder to comply with its information disclosure requirements.
- 9.3 The Provider acknowledges that the Funder may be required under the FOIA and the EIRs to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Provider. The Funder shall take reasonable steps to notify the Provider of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but the Funder shall be responsible for determining in its absolute discretion whether information is to be disclosed in response to the information request and whether information is exempt from disclosure in accordance with the FOIA and / or the EIRs.
- 9.4 Where the Provider is subject to the requirements of FOIA and/or the EIRs the Provider will process the requests it receives for the information it holds and will be solely responsible for complying with its own information disclosure requirements.

10. DATA PROTECTION

- 10.1 DPA means Data Protection Act 1998
- 10.2 Data Protection Legislation means the DPA and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner; and any successor legislation specifically including the General Data Protection Regulation when it enters into force on 25th May 2018.
- 10.3 Personal Data means Personal Data as defined by the Data Protection Legislation.
- 10.4 Data Controller means Data Controller as defined by the Data Protection Legislation.
- 10.5 Each party confirms that it is registered with the Information Commissioner's Office as a Data Controller as required by the Data Protection Act 1998.
- 10.6 The Funder and the Provider will continue to be the Data Controller (as defined by the Data Protection Legislation) for the data it holds and shall retain the responsibilities held with this position.
- 10.7 Each party will become the Data Controller for the Personal Data shared under this Agreement and will ensure that the Personal Data will only be used for the purposes of assessing and processing the Early Years Education Payment by the Funder and the associated delivery of Early Years Education by the Provider.
- 10.8 The Provider will share with the Funder:-
- (a) Parent information:-
 - (i) Name,
 - (ii) Address, and
 - (iii) National Insurance Number)
 - (b) Information about children under the age of 18:-
 - (i) Name,
 - (ii) Address,
 - (iii) Date of birth,
 - (iv) Gender,
 - (v) Ethnicity,
 - (vi) Foundation stage profile results,

- (vii) First language,
 - (viii) Eligibility reference number,
 - (ix) Setting attendance, and
 - (x) Special Educational Needs).
- 10.9 The Funder will share with the Provider details of the funding claims made by the Provider against each child in its care.
- 10.10 The Provider shall ensure that the parent of each child has given explicit consent to the Provider sharing with the Funder their child's Personal Data as identified in clause 10.9(b) (v) and (x), for the provision of the purposes detailed in clause 10.8 in conformity with Data Protection Legislation.
- 10.11 The Funder and the Provider agree to share Personal Data only using secure methods of transfer.
- 10.12 Each party shall have a written policy for the retention and disposal of the Personal Data and shall ensure that the Personal Data is stored and disposed of securely in accordance with that policy.
- 10.13 Each party shall be responsible for ensuring that it has technical, organisational and security measures in place to protect the security, confidentiality, integrity and availability of the Personal Data (both electronic and hard copy) during all stages of processing the Personal Data and shall ensure the lawful use of the information shared under this Agreement.
- 10.14 Each party shall ensure that their staff comply with their rules and policies in relation to the protection and use of shared data and that staff have received sufficient training and are aware of their individual responsibilities in relation to data protection and the confidentiality, integrity and availability of Personal Data. Each party will ensure that appropriate sanctions and disciplinary procedures are in place to deal with non compliance.
- 10.15 The staff of either party may only be permitted access to the Personal Data shared under this Agreement when necessary in order for them to perform their duties they are required to deliver in connection with this Agreement.
- 10.16 Each party will ensure that any staff processing information shared under this Agreement are trained in data protection.

- 10.17 The Funder and the Provider shall be aware of the rights data subjects have concerning their Personal Data under the Data Protection Legislation.
- 10.18 The Provider must publish and bring to the attention of users of the Free Early Years Provision the “privacy notice” as set out in Schedule 3 prior to the Personal Data being shared with the Funder specifically referencing the Funder as a partner with whom the Provider will be sharing information and the purposes of this.
- 10.19 Each party agrees that they will only process the Personal Data shared under this agreement within the EEA.
- 10.20 On becoming aware of a potential data breach relating to the Personal Data identified in clause 10.9 the Provider’s named contact will alert the Funder’s Data Protection Officer in writing within 24 hours at data.protection@hants.gov.uk.
- 10.21 On becoming aware of a potential data breach relating to the Personal Data identified in clause 10.10 the Funder will alert the Provider’s named contact in writing within 24 hours via an agreed email address.
- 10.22 Each party accepts responsibility for independently auditing its compliance with the Data Protection Legislation.
- 10.23 The Parties shall review and consider any alterations to this clause as a result of the General Data Protection Regulation as set out in Regulation (EU) 2016/679 which shall apply from 25 May 2018 and is expected to cause the DPA to be replaced, amended or updated.

11. WITHHOLDING, SUSPENDING AND REPAYMENT OF EARLY YEARS EDUCATION PAYMENT

- 11.1 The Funder's intention is that the Early Years Education Payment will be paid to the Provider in full. However, without prejudice to the Funder's other rights and remedies, the Funder may at its discretion, invoke the process within Schedule 5 of these Terms, or withhold or suspend all or part of the payment of the Early Years Education Payment and/or require repayment of all or part of the Early Years Education Payment if:
- (a) the Provider does not sign the Early Years Education Funding acceptance document by the required time, or date requested by the Funder, and in any event, prior to any Funding payments being made;

- (b) the Provider makes a claim through the on-line processes but does not accept the on-line declaration confirming acceptance of these terms and conditions;
- (c) the Provider uses the Early Years Education Payment for other unapproved purposes, and, or not in accordance with these Terms and Conditions;
- (d) the Provider submits incomplete or incorrect Headcount Tasks or in period adjustment Tasks or EYNFF data returns, even when this is in error;
- (e) the Provider does not submit an accurate census return within the timeframe set by the Funder.
- (f) the Provider has not made satisfactory progress with the delivery of the Free Early Years Provision as defined within the OFSTED regulatory inspection outcome and within the prescribed timeframe for improvement;
- (g) the Provider received over a period of time any OFSTED outcome which is either “Inadequate”, “Requires Improvement” or Satisfactory and which demonstrates that they have not made satisfactory progress during that period;
- (h) the Provider obtains funding from a third party which, in the reasonable opinion of the Funder, undertakes activities that are likely to bring the reputation of the Free Early Years Provision or the Funder into disrepute;
- (i) the Provider provides the Funder with any misleading or inaccurate information;
- (j) the Provider commits or has committed a Prohibited Act;
- (k) any member of the governing body, employee or volunteer of the Provider has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Free Early Years Provision or (b) taken any actions which, in the reasonable opinion of the Funder, bring or are likely to bring the Funder's name or reputation into disrepute;
- (l) the Provider ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- (m) the Provider becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into

- any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
- (n) the Provider fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure, which the Provider must rectify.
- 11.2 Wherever under the Agreement any sum of money is recoverable from or payable by the Provider (including any sum that the Provider is liable to pay to the Funder in respect of any breach of the Agreement), the Funder may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider.
- 11.3 The Provider shall make any payments due to the Funder without any deduction whether by way of set-off, lien, counterclaim, discount, abatement or otherwise.
- 11.4 The Funder may suspend or withhold Early Years Education Payments should the Provider be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Free Early Years Provision or compliance with this Agreement. The Provider shall notify the Funder as soon as possible and without delay of any such circumstances affecting financial stability.

12. TERMINATION

- 12.1 The Funder may terminate this Agreement and any Early Years Education Funding Payments as soon as it is practicable, by giving the Provider written notice, under the relevant circumstances and in particular:
- (a) the Secretary of State for Education advises Hampshire County Council to do so; or
 - (b) the registration with OFSTED is withdrawn; or
 - (c) the Provider cannot offer the full entitlement of 570 hours for eligible children (other than through lack of vacancies); or
 - (d) where OFSTED rates the provision to be less than “Good” or “Outstanding” and the Provider does not co-operate and commit to working with Hampshire County Council to effect the necessary improvement; or
 - (e) the Provider does not address the local authority safeguarding requirements to ensure that children are kept safe;
 - (f) the Provider ceases to meet the requirements outlined in this agreement.

- 12.2 12.1 (a) and (b) will lead to immediate suspension from the scheme and suspension from the approved Providers.
- 12.3 12.1 (c) (d) (e) (f) (g) (h) will be considered as part of the Funder's procedure for removal or suspension of Providers from the Directory of Providers unless there is any legal obligation for the Funder to suspend or remove the Provider from the approved list then this would be done with immediate effect.

13. ANTI-DISCRIMINATION

- 13.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.
- 13.2 The Provider shall take all reasonable steps to secure the observance of clause 13.1 by all servants, employees or agents of the Provider and all suppliers and sub-contractors engaged on the Free Early Years Provision.

14. HUMAN RIGHTS

- 14.1 The Provider shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Provider were a public body (as defined in the Human Rights Act 1998).
- 14.2 The Provider shall undertake, or refrain from undertaking, such acts as the Funder requests so as to enable the Funder to comply with its obligations under the Human Rights Act 1998.

15. LIMITATION OF LIABILITY

- 15.1 The Funder accepts no liability for any consequences, whether direct or indirect, that may come about from the Provider running the Free Early Years Provision, the use of the Early Years Education Payment or from withdrawal of the Early Years Education Payment. The Provider shall indemnify and hold harmless the Funder, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Provider in relation to the Free Early Years Provision, the non-fulfilment of obligations of the Provider under this Agreement or its obligations to third parties.

- 15.2 Subject to clause 15.1, the Funder's liability under this Agreement is limited to the payment of the Early Years Education Payment.
- 15.3 Nothing in this Agreement shall limit or exclude each party's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; and
 - (b) fraud or fraudulent misrepresentation.

16. WARRANTIES

The Provider warrants, undertakes and agrees that:

- (a) it will deliver the free entitlements consistently to all parents, whether in receipt of 15 or 30 hours and regardless of whether they opt to pay for optional services or consumables and ensure those children accessing the free entitlements should receive the same quality and access to provision to those who do not.
- (b) the Provider shall follow the Early Years Foundation Stage (EYFS), have clear safeguarding policies and procedure in place that link to the local authority's guidance for recognising, responding, reporting and recording suspected or actual abuse.
- (c) the Provider must have arrangements in place to identify and support children with special education needs and/or disabilities (SEND) and to promote equality of opportunity for children in their care. These arrangements should include a clear approach to identifying and responding to all children with special educational needs (SEN), whether or not they have an Education, Health and Care (EHC) plan in accordance with the Special Education Needs Code of Practice January 2015 and Early Years Foundation Stage⁶.
- (d) the Provider shall have all necessary resources and expertise to deliver the Free Early Years Provision;
- (e) it has not committed, nor shall it commit, any Prohibited Act;
- (f) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Funder immediately of any significant departure from such legislation, codes or recommendations;

⁶

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596629/EYFS_STATUTORY_FRAMEWORK_2017.pdf
<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

- (g) it shall comply with the requirements of the Health and Safety at Work etc., Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Free Early Years Provision;
- (h) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (i) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (j) all financial and other information concerning the Provider which has been disclosed to the Funder is to the best of its knowledge and belief, true and accurate;
- (k) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Early Years Education Payment;
- (l) has disclosed all relevant information to the Funder in order for the Funder to admit the provider to the Early Years Education Payment funding scheme and for the Provider to be added to the directory of registered providers of Early Years Education; and
- (m) since the date of its last accounts, there has been no material change in its financial position or prospects.

17. INSURANCE

- 17.1 The Provider shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss (the **Required Insurances**).
- 17.2 The Funder requires the Provider to maintain the Required Insurances referred to above which must be supported by a valid annual policy certificate:
- (a) public liability insurance with a limit of indemnity of not less than **[five] million pounds [(£5,000,000)]** in relation to any one claim or series of claims arising from the Service; and

- (b) employer's liability insurance with a limit of indemnity of not less than **[five] million pounds [(£5,000,000)]** in relation to any one claim or series of claims arising from the Service; and
- (c) professional indemnity insurance with a limit of indemnity of not less than **[one] hundred thousand pounds [(£100,000)]** in relation to any one claim or series of claims arising from the Service.

The Provider shall (on request) supply to the Funder a copy of such insurance policies and evidence that the relevant premiums have been paid.

18. DURATION

- 18.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this agreement and remain in place unless Schedule 5 has necessitated the withdrawal of the Provider from the List of Approved Providers and/or the agreement is required to be terminated under the terms outlined in section 18 of this Agreement.
- 18.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

19. ASSIGNMENT

The Provider may not, without the prior written consent of the Funder, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Free Early Years Provision, transfer or pay to any other person any part of the Early Years Education Payment.

20. WAIVER

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

21. NOTICES

All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally

delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

22. DISPUTE RESOLUTION

- 22.1 In the event of any complaint or dispute (which does not relate to the Funder's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the matter must first be referred for resolution to the Service Manager Childcare and Business Support or any other individual nominated by the Funder from time to time.
- 22.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Service Manager Childcare and Business Support or other nominated individual, as the case may be, either party may refer the matter to the Head of Services for Young Children of the Council and the [Chair or Chief Executive] of the Provider with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the parties.
- 22.3 In the absence of agreement under clause 23.1, the parties may seek to resolve the matter through mediation under the CEDR (Centre for Effective Dispute Resolution) Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

23. NO PARTNERSHIP OR AGENCY

This Agreement shall not create any partnership or joint venture between the Funder and the Provider, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

24. JOINT AND SEVERAL LIABILITY

Where the Provider is not a company or an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Provider shall be jointly and severally liable for the Provider's obligations and liabilities arising under this Agreement.

25. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

26. ENTIRE AGREEMENT

This Agreement and any documents referred to in it constitute the whole agreement between the parties and supersedes previous versions advertised and any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.

27. VARIATION

The Funder reserves the right to amend these Terms and Conditions from time to time. This may include the need to make amendments to reflect changes in legislation and Department for Education guidance. The Funder shall notify the Provider of any such amendments prior to these amendments being incorporated to the Terms and Conditions. Any amendments will be notified through the provider's business email account and incorporated into the published Terms and Conditions within 20 working days of such notification. These amendments shall then form part of the Terms and Conditions which the Provider has signed for and accepted and be legally binding upon the Provider.

28. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the Laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

Schedule 1 - Delivery of Free Early Years Education

- 1.1 The Provider shall deliver high quality flexible childcare free of charge to parents.
- 1.2 Providers must promote equality and inclusion, particularly for disadvantaged families; looked after children, children in need and children with disability or special educational needs. The Provider shall:
- remove barriers of access to free early education;
 - work with parents/carers to give each child support to fulfil their potential;
 - maintain a good working partnership with their Hampshire County Council Family Support Service to maximise family learning a support and signposting to other appropriate services for the child and/or family.
- 1.3 Providers must deliver Free Early Years Education at times and in patterns that support parents to **maximise** the use of their child's free Early Years Education entitlement. There are 570 hours per eligible birthday year universal entitlement; there is a further to 570 hours extended entitlement (30 hours) for eligible children. For those eligible children the maximum that will be paid shall be 1140 hours per eligible birthday year.

Flexibility and partnership working

- 1.4 The Provider should make information about their offer and admissions criteria available to parents at the point the child first accesses provision at their setting. The Provider must indicate clearly to parents the dates, days and times the Free Early Years Education is available.
- 1.5 Where a Provider is unable to make the whole free early years entitlement available through their own provision, Providers should consider working in partnership with another approved provider to ensure the maximum free Universal Offer or Extended Entitlement (30 hours for each child in each 12 month period from the date the child becomes eligible).
- 1.6 Provider's that are not able to provide access for the full entitlement (open for 38 weeks a year for 15 hours a week universal offer or up to 30 hours a week for the extended entitlement) must actively ensure that the Parent is informed of the remaining hours available of free entitlement so the child can access these remaining free hours at another Provider if they choose to do so.

- 1.7 Providers should incorporate partnership working with parents to agree how the child's overall care will work in practice when their free entitlement is split across different providers to ensure a smooth transition.
<https://www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-toolkit>
- 1.8 Children cannot take up their entitlement at more than two providers in a single day.
- 1.9 The Provider can also “stretch” the maximum free Early Years Education over fewer hours a week over more weeks a year. The Provider should still provide the “standard” offer as well as a “stretched” offer at their setting.
- 1.10 Delivery of Free Early Years Education can be offered flexibly but in any one day must:
- Not be longer than 10 hours
 - Not be before 6.00 am or after 8.00 pm
- 1.11 Free places can be delivered:
- Over/ up to 52 weeks of the year
 - Outside of maintained school term times
 - At weekends.

Provider Fees and Charges

- 1.12 Providers should deliver the free entitlement consistently so that all children accessing any of the free entitlements will receive the same quality and access to provision regardless of whether they opt to pay for optional hours, services, meals or consumables.
- 1.13 Providers can charge for meals and snacks as part of a free entitlement place and they can also charge for consumables (see appendix 1 examples 1, 2 and 3 for more details).
- 1.14 Where parents are unable or unwilling to pay for meals and/or consumables, Providers who choose to offer the free entitlement are responsible for setting their own policy on how to respond, with options including waiving or reducing the cost of meals and snacks, or allowing parents to supply their own meals. Providers are responsible for setting a clear and transparent charging policy setting out how charges are being applied to enable parents to make an informed choice of Provider to meet their requirements.

- 1.15 Providers may charge parents a deposit to secure their child’s free place. Any deposit from a parent using free hours only should be repaid within a reasonable time of the child taking up their place. Providers must publish their repayment terms.
- 1.16 Providers should be completely transparent about any additional charges and ensure their invoices are receipts are clear, transparent and itemised, allowing parents to see that they have received their free entitlement completely free of charge and understand fees paid for additional hours or other services.
- 1.17 Providers must not charge parents “top-up” fees (the difference between a provider’s usual fee and the funding they receive from the Funder to deliver free places) or require parents to pay a registration fee as a condition of taking up a child’s free place.

Child’s Eligibility

- 1.18 Children become eligible for the free entitlement from the beginning of the funding period following their second birthday (if eligible), or third birthday, up to term after their fifth birthday and the child is of statutory school age:

A child born between	A child will be eligible for two three or four year old funding from
1 January and 31 March	1 April following the child’s second or third birthday
1 April and 31 August	1 September following the child’s second or third birthday
1 September and 31 December	1 January following the child’s second or third birthday

- 1.19 A childminder cannot claim Early Years Education Funding for providing childcare to their own child or the child of a relative even if they are caring for other children. A relative in relation to a child means a grand parent, aunt, uncle, brother or sister, whether of full blood or half blood or by marriage or civil partnership⁷.
- 1.20 Children who are of compulsory school age are not eligible for Early Years Education Funding.
- 1.21 The Provider must have regard to Hampshire County Council’s Schools Admissions Guidance. Children can start school in reception classes

⁷ Early years provision is defined in Section 18 of the Childcare Act 2006.

(Year R) the September immediately following a child's fourth birthday. The Provider is expected to ensure children leave the setting following a well informed discussion with parents, taking into account their views of a child's maturity and readiness to enter reception class.

- 1.22 In accordance with the School Admission Code, children are able to take up a place in a maintained school reception class from the September following their fourth birthday. Parents can request that their child's admission is deferred until later in the year, but not beyond the point they reach compulsory school age, at the beginning of the term following their fifth birthday. Where a child does not take up their place in a reception class, a deferred entry declaration form must be completed so children may continue with the Provider and continue to receive Early Years Education Payment funding. Early Years Education cannot be claimed in addition to attendance at school.
- 1.23 For children aged 4 and 5 who have not taken up their school place for any reason in a maintained school, it is the Provider who must complete the Early Years Foundation Stage Profile⁸ and make the statutory return to the Funder.

Schedule 1 (A) Delivery of the universal 15 hours

- 1.24 All three and four year old children⁹ who meet the eligibility birth dates can take up a free Early Years Education place at a Provider.
- 1.25 Only two year old children who meet the DfE eligibility criteria for two year olds and have been approved by the Funder as eligible can take up a free Early Years Education place as a funded two year old.¹⁰
- 1.26 Providers must follow guidance provided on the Funders website: <http://www.hants.gov.uk/childrens-services/childcare/providers/eye-eydff/eye-scheme.htm#section473437-3> and ensure they have made sufficient checks to confirm each child's eligibility and secured the appropriate authorisation from the parent/carer to claim the universal Early Years Funding payment.

Schedule 1 (B) – Delivery of the extended 15 hours childcare

⁸ Early Years Foundation Stage Profile – consists of 20 items of information, the attainment of each child assessed in relation to the 17 Early Learning Goals (ELG) descriptors together with a short narrative describing the child's three characteristics of effective learning .

⁹ The child's residence is not limited to the Hampshire local authority area.

¹⁰ Eligibility will not be reassessed and two year old eligible children remain eligible until they reach the age to receive the universal entitlement for three and four year olds

Eligibility (30 hours)

- 1.27 Only providers registered with the Funder for the extended 15 hours entitlement (30 hours) will be accredited for access to the extended 15 hour childcare (30 hours) eligibility checking system and be allowed to submit claims for the extended entitlement.
- 1.28 Providers must verify a child’s eligibility for the extended entitlement. Parents must present their eligibility reference number to their chosen provider in order for the Provider to undertake the check eligibility for the extended free hours (which is determined by HMRC through the online application). Providers must ensure that they have permission from parents to use their personal information to check their eligibility for the extended entitlement. The Provider should use the parent declaration form made available by the Funder to secure this permission.
- 1.29 Before the child is able to take up the extended free hours in accordance with arrangements made available by the Funder, Providers should verify the extended hours eligibility code provided by the parents to ensure eligibility/entitlement.
- 1.30 A child will be entitled to the extended free hours from the funding period after BOTH of the following conditions are satisfied
- the child has attained the age of three;
 - the child’s parent has a current positive eligibility from the HMRC.
- 1.31 Children become eligible for the extended free entitlement from the beginning of the funding period following their third birthday, up to term after their fifth birthday and the child is of statutory school age and the parent has confirmed eligibility from the HMRC as follows:

A child born between	AND Parent has received a positive eligibility from HMRC	A child will be eligible the extended entitlement from
1 January and 31 March	Prior to 1 April	1 April following the child’s third birthday
1 April and 31 August	Prior to 1 September	1 September following the child’s third birthday
1 September and 31 December	Prior to 1 January	1 January following the child’s third birthday

- 1.32 **Grace Period:** Parents are required to confirm their eligibility every 3 months. The Funder will continue to fund a place for a child whose

parents cease to meet the eligibility criteria as set out in the table below:

Date Parent receives an ineligible decision on reconfirmation:	LA audit date	Grace period end date
1 January – 10 February	11 February	31 March
11 February – 31 March	1 April	31 August
1 April – 26 May	27 May	31 August
27 May – 31 August	1 September	31 December
1 September – 21 October	22 October	31 December
22 October to 31 December	1 January	31 March

- 1.33 A grace period only refers to a child who has already claimed and the Funder has paid for extended hours.
- 1.34 The Funder will complete an audit check on eligibility codes at six fixed points in the year, half term and end of term across the year in line with dates in table above. The Funder will notify Providers of the grace periods and Providers are required to notify parents who are ineligible for the extended entitlement at the audit check date. (See Appendix 1 for example 4 for how the eligibility dates are applied).

Schedule 2 - Early Years Education Funding Rate and Payment

Early Education Funding Rate

- 2.1 The Funder's Early Years National Funding Formula (EYNFF) will determine the hourly rate to be paid to each Provider for delivering Early Years Education for three and four year olds.
- 2.2 The EYNFF has a single fixed base rate and a variable rate based on the agreed supplements which will be published on the Funder's website [SfYC Provider funding website](#) . Each child attending the setting may receive additional funding based on the Income Deprivation Affecting Child Index (IDACI) rating for their home address and/or each child may receive Early Years Pupil Premium (EYPP)¹¹ (deprivation). The Funder will publish on the website the EYNFF basis of its calculation.
- 2.3 The Funder will publish the value of the EYNFF base rate and the values of each of the funding elements in **early/mid March** of each year.
- 2.4 Nursery schools and nursery units maintained by Hampshire County Council have additional statutory duties for which they will also receive a flat rate payment.
- 2.5 To ensure the funding rates and the Provider's Early Years Education delivery are as accurate and up to date as possible, the Funder will collect information from every approved Provider annually through the EYNFF process, usually during the **Autumn or Spring funding period** (see paragraph 2.10 below).
- 2.6 Providers must submit to the Funder as part of the **EYNFF** data collection (and at any other time when requested to do so), in order for the Funder Provider to calculate their individual hourly funding rate.
- 2.7 In order for the Funder to calculate the "quality" rate, Providers will be required to submit details about staff delivering Early Years Education and should ensure that they collect and submit staff data in accordance with the Any information provided must be collected and submitted in accordance with Provider's data protection protocols and privacy notices.
- 2.8 The funding rate will be fixed for each financial year and sent to each Provider by 31 March. The Provider will receive an indicative estimate of their Early Years Education funding for the financial year based on their previous claim pattern and their new hourly rate.

¹¹ The payment of Early Years Pupil Premium is subject to the published DfE guidance. EYPP funding started 1 April 2015.

- 2.9 The hourly rate will be notified before and fixed from 1 April each year, and continue throughout each financial year, based on the data submitted by the Provider in the EYNFF data return.
- 2.10 The funding rates will default to the lowest values where a Provider fails to provide information requested.
- 2.11 New Early Years Education Providers will complete the EYNFF data return as part of the application process to be registered as a Provider for Early Years Education in Hampshire. Where information is not provided the rate will be set at the base rate until the Provider submits accurate and up to date information to calculate their funding rate. Any difference in rate will be reconciled at the first headcount claim for first funding period.

Funding Schedule – funding periods

- 2.12 The Funder follows the DfE funding periods for making EYE claims as follows:
- Summer – 1 April to 31 August
 - Autumn – 1 September to 31 December
 - Spring – 1 January to 31 March.

Funding Schedule – Headcount claims

- 2.13 Claims for eligible children (as set out in Schedule 1 – clauses 1.11 to 1.13) are submitted by the Provider for each of the funding periods for children who have been registered for agreed EYE hours by parents/carers through the signed parent declaration form. Eligible children must be registered by the Headcount Task submission deadline date to be attending the setting during the funding period ending either: 31 March, 31 August or 31 December.
- 2.14 The Funder will publish on their website the actual dates for which the Headcount claim must be made and any other procedures for making a Headcount claim
- 2.15 Alternative arrangements will be made to take account of those providers who will be closed during school holidays and not available to submit their claims during the standard Headcount Task period. Providers are responsible for making arrangements to submit claims within the published dates.
- 2.16 Headcount claims not submitted by the deadline of the Headcount Task, will not be paid. Provider's submitting after the deadline must

make their claim for EYE funding when the In Period Adjustment Task is issued.

- 2.17 Claims requested after the Task deadlines may be subject to an administration charge in order to arrange payment. All claims for each funding period must be made by 31 March, 31 August and 31 December in order to guarantee payment for that funding period. Claims may not be backdated to a previous funding period.
- 2.18 For the purpose of claiming the extended entitlement (30 hours), Providers must verify the eligibility of the 3 or 4 year old child before accepting them for the EYE funded place. Eligibility can be verified by the system provided by the Funder.
- 2.19 For the purpose of claiming the 2 year old free Early Years Education offer, the Provider must verify the eligibility of the 2 year old child before accepting them for an EYE funded place. Eligibility can be verified by electronic checking system provided by the Funder or with a 2 Year old acceptance letter (proof of eligibility) provided by the approving Local Authority to the Parent/Carer. Such a letter should contain the Child Unique Claim number (proof of eligibility) which the Provider must use for all Headcount or In Period Tasks and any correspondence with the Funder relating to the child.
- 2.20 For claiming Early Years Pupil Premium (EYPP), Providers must enter the parent details from the Parent Declaration Form and submit these details for EYPP eligibility checking as part of the Headcount claim. EYPP payments will be made with the EYE payment for eligible children.

Funding Schedule – In Period Adjustments

- 2.21 If a child with free Early Years Education entitlement registers after the Provider has submitted their Headcount Task or a Provider misses the deadline of the Headcount Task, the Provider must claim for the child through the In Period Adjustment Task.
- 2.22 In Period adjustments for eligible children (as set out in Schedule 1 – clauses 1.11 to 1.13) are submitted by the Provider after headcount for children who have been registered for EYE hours by parents/carers through the signed parent declaration form. Children must be registered as attending the Provider by the end of the funding period. In Period Adjustments should be made according to the Funder's published information which can be found on the Services for Young Children website.

- 2.23 If a child leaves during the funding period the provider must use the In Period Adjustment Task to reduce the hours being claimed against the child's record for the funding period.
- 2.24 If a parent provides a voluntary EYPP registration form after headcount, the provider must update the child record as an In Period Adjustment for the eligibility check to be undertaken and funding paid.
- 2.25 There will be a minimum of two In Period Adjustment Tasks issued for summer and one in the autumn and one in the spring funding period.
- 2.26 Where an In Period Adjustment Task results in an amount being owed to the Funder, the Provider will not be required to return this funding separately. Reductions in funding owed to the Provider will be recovered by the Funder by reducing the next payment to the Provider.

Funding Schedule – payment arrangements

- 2.27 Should a Provider ceases to trade, be suspended or the agreement terminated during a funding period, refer to paragraph 3.6 (page 7).
- 2.28 On confirmation by the Funder that a complete and accurate claim has been made, the Funder will to make EYE funding payments by the last working day of the first month of the funding period and by the last working day of the funding period unless circumstances prevent achieving the payment date, in which case the Funder will contact the Provider directly and payment will be made as soon as possible. In the event that the Provider has made omissions or errors requiring the Funder to request further information, this may delay the date by which the Funder will pay the EYE funding.
- 2.29 The Funder may remove any child claim details in dispute for submission at a later In Period Task in order to release the main payment to the Provider.
- 2.30 The Funder will provide the necessary tools for the Provider to complete their Early Years Education funding claims or other data collection in either downloadable media, hard copy or through secure online environments. All claims for EYE funding must be made on the Funder's on-line claim process.
- 2.31 The Funder will agree locally with childminder agencies and each childminder registered with each agency whether funding for the early education entitlement is paid directly to childminders or is routed to the childminder through the agency.

Schedule 3 - Privacy Notices

- 3.1 The Funder will provide on its website a downloadable Privacy Notice for child data: <http://www.hants.gov.uk/childrens-services/childcare/providers/eye-eydff/eye-scheme.htm>
This Notice will clearly outline how data and information collected by the Provider will be used by the Funder.
- 3.2 The Funder will inform Providers through the business email account when the Privacy Notice is changed or updated.
- 3.3 The Provider must download and print the privacy notice and published it at the setting so that it is brought to the attention of all parents/carers whose children attend for Early Years Education at that setting.
- 3.4 The Funder will provide on its' website a downloadable Staff Privacy Notice example for Providers to use for the collection of staff data for the EYDFF.
<http://www.hants.gov.uk/childrens-services/childcare/providers/eye-eydff>

Schedule 4 - Requirements of Early Years Education Funding Payment

- 4.1 The Funder will only use OFSTED¹² outcomes to determine whether to fund a Provider to deliver Early Years Education places in accordance with statutory guidance.
- 4.2 The Provider can only receive funding for three and four year old children where the OFSTED outcome is “Outstanding”, “Good” or “Requires Improvement”/”Satisfactory” or “Met”.
- 4.3 The Provider can only receive funding for two year old children where the OFSTED outcome is “Outstanding” or “Good”. The Funder will only fund two year old children in provision judged by OFSTED as “Requires Improvement”/”Satisfactory” where there is not sufficient accessible “Good” or “Outstanding” provision available.¹³
- 4.4 The Funder will fund new Providers registered with OFSTED (but not yet assessed by OFSTED) until their first full OFSTED inspection is published.
- 4.5 The Funder will not fund any provider if they do not actively promote fundamental British values or if they promote views or theories as fact, which are contrary to established scientific or historical evidence and explanations irrespective of any OFSTED judgment.
- 4.6 The Funder will not fund a childminder registered with a childminder agency where the childminder agency has indicated to the Funder that the childminder is not of satisfactory quality, unless as in 4.3 it is necessary to do so.
- 4.7 All Providers seeking Early Years Education funding from the Funder:
- (a) must be geographically located on premises within the Hampshire County Local Authority area to be included on the Hampshire Directory of Early Education providers;
 - (b) must deliver the full statutory Early Years Foundation Stage (EYFS) and be registered with OFSTED¹⁴, or be a provider who is exempt from registration with OFSTED or a Provider that is exempt from delivery of EYFS Learning and Development requirements according to DfE Guidance on Exemptions for Early Years;

¹² Or on the judgement of an independent Inspectorate approved by the Secretary of State.

¹³ The funder may where appropriate take into account the continuity of care for children. The Funder will review on a case by case basis any requests for new eligible 2 year old children to start at a provider where they have received an Ofsted outcome of less than “good”

¹⁴ Or be subject to an independent Inspectorate approved by the Secretary of State.

- (c) must actively promote fundamental British values and not promote views or theories as fact which are contrary to established scientific or historical evidence and explanations;
 - (d) must meet the needs of disabled children and children with special educational needs attending their provision;
 - (e) must keep children attending their provision safe;
 - (f) must meet the independent school standard in relation to the spiritual, moral, social and cultural development of pupils;
 - (g) where a Provider, including an independent childminder, receives confirmation of an outcome that is deemed “Requires Improvement” or “Inadequate”, or “Not Met” they must inform the Funder within 5 working days of any OFSTED outcome/notification, if they have funded two, three or four year old EYE funded children;
 - (h) where a childminder agency identifies that a childminder registered with them is deemed “Requires Improvement” or “Inadequate”, or “Not Met” they must inform the Funder within 5 working days of any OFSTED outcome/notification, if they have funded two, three or four year old EYE funded children;
- 4.8 During the period of time the Provider is rated “Inadequate” by OFSTED, the Funder may consider securing alternative provision as soon as is practicable for children who are receiving their funded entitlement at a Provider.
- 4.9 The Provider must inform the Funder of any variations/changes in OFSTED registration. The provider must also inform the Funder of any changes affecting opening times, number of places available at the setting, as soon as these changes take place.
- 4.10 When a Provider receives an OFSTED outcome of “Requires Improvement” or “Inadequate”, the Funder will use the process described in Schedule 5. Providers must demonstrate that they have acted reasonably and in the timescales indicated to address concerns raised by OFSTED at inspection. Providers do not have to accept the Funder’s support offer; they are required to provide evidence to demonstrate they are making alternative arrangements and their action plan to address the specific issues raised by Ofsted.
- 4.11 Providers should use the Council’s emergency closure procedure to inform of unplanned closures: <http://www.hants.gov.uk/childrens-services/childcare/providers/more-information/sfyc-information-library>
- 4.12 Providers must inform Hampshire County Council within 7 days of any change in legal entity/ownership of the setting through sale or other organisational change. Section 19 refers.

- 4.13 Providers must provide the Funder with an email address for all communications regarding Early Years Education and ensure that this email account is checked regularly and frequently, and respond to emails and correspondence from the Funder within the timescale requested. Personal or sensitive information shared by the Provider to the Funder must be done so securely. It is the responsibility of the Provider to ensure that all emails to the Council that contain personal or sensitive data are shared securely and in accordance with the Providers own data protection policies and registration with the Information Commissioners Office.
- 4.14 Providers must comply with all relevant legislation and statutory guidance, any amendments or re-enactments to them, in particular, the Children Act 1989, Children Act 2004 the Childcare Act 2006, the Childcare Act 2016, the School Admissions Code 2014, the Statutory Framework for the Early Years Foundation Stage 2014, the Childcare (Early Years Provision Free of Charge (Extended Entitlement) Regulations 2016, the Early Education and Childcare, Statutory guidance for Local Authorities 2017, the Special Educational Needs and Disability Code of Practice: 0 to 25 years 2015, and all other relevant legislation e.g. Race Relations Act 1976, Race Relations (Amendment) Act 2000; Disability Discrimination Act 1995 and the Special Educational Needs and Disability Act 2001, Equality Act 2010 and Data Protection Act 1998.
- 4.15 Providers must ensure that electronic means of communication is managed to ensure protection of personal data.
- 4.16 Providers must maintain close collaboration with any other Provider also providing the child's entitlement or Early Years Foundation Stage.

Schedule 5 - Procedure to Withdraw/Suspend Early Years Education Payment

Introduction

- 5.1 Every Provider who registers to receive early education funding and support from Hampshire County Council is required to sign a document accepting the Terms of this, the Early Years Education (EYE) Agreement. By doing so, they agree to adhere to the quality standards, principles and requirements outlined by the Funder and the Department for Education (DfE) Statutory Guidance for Local Authorities on the delivery of Free Early Education.
- 5.2 The Provider acknowledges that it is a requirement of the DfE that the Funder keeps a directory of all Providers that are approved to receive Early Years Education funding (EYE). It is the responsibility of the Funder to decide whether a Provider is able to meet the requirements in this, the EYE Funding Payment Agreement and can join the Directory. It is also the responsibility of the Funder to assess Providers for the purpose of removing/suspending a Provider from the Directory.
- 5.3 This procedure outlines the processes undertaken by the Funder to remove, or suspend a Provider from the Directory.
- 5.4 The Funder will where appropriate follow this three stage process however, the Funder reserves the right to accelerate to any stage deemed appropriate by the Service Manager Childcare and Business Support or Head of Early Years Service.

Stage One

- 5.5 Where a Provider does not meet the quality standards, principles and requirements, or the Local Development Team (LDT) has concerns regarding the Provider's progress which may lead to, potential removal from the list of approved Providers, the Services for Young Children officer or their representative will arrange an External Team Around the Setting (ETAS). The Provider will receive notification in writing with the reasons for the meeting clearly stated.
- 5.6 It is the Provider's responsibility to address concerns raised by OFSTED or the Funder. The Funder will make available a support offer to assist the provider to make the quality improvement necessary. The provider may choose to seek support from an alternative source, and if so must notify the Funder.
- 5.7 The outcome of this meeting with the Provider is to clearly identify OFSTED actions and timescales of required improvement. The Funder

may use the ECERS and ITERS or FCCERS rating scale or other tools/resources to support this action planning.

- 5.8 A report of agreed actions will be reported to Service Manager Childcare and Business Support responsible for EYE funding with agreed review date.
- 5.9 To confirm that the Provider has made appropriate improvement the ECERS and ITERS or FCCERS¹⁵ (for child minders) or other tools/resources framework used will be reviewed and a further assessment may be moderated by an appointed Services for Young Children representative if the Local Development Team consider this appropriate.
- 5.10 If acceptable progress has been demonstrated within the agreed timescale and the Service Manager Childcare and Business Support is confident that the Provider will continue to make further progress the Provider will receive a letter to confirm this.
- 5.11 If there is no change in practice the matter will be progressed to stage two.

Stage Two

- 5.12 The Local Development Team will request a formal letter be sent by the Service Manager Childcare and Business Support responsible for EYE funding stating the concerns that have been raised and asking how the setting will address these concerns. The Provider will be expected to respond in writing on the issue of addressing those concerns within an agreed timescale. The letter and the Provider's response will address the timeline required to demonstrate improvement in practice.
- 5.13 The Service Manager will set up a meeting with representatives from the Provider who are expected to have the appropriate level of management responsibility to review the timeline proposed by the Provider and the Funder will confirm in writing the agreed actions with dates to be achieved. The progress will be monitored by the Local Development Team.
- 5.14 If acceptable progress has been demonstrated within the agreed timescale and the Service Manager Childcare and Business Support is confident that the Provider will continue to make further progress the Provider will receive a letter to confirming this.

¹⁵ The Funder will use FCCERs for childminders who are independently registered with OFSTED if they choose their improvement support to be delivered by the Funder.

- 5.15 If there is no change or little progress made the matter will be progressed to Stage three.

Stage Three

- 5.16 The Service Manager Childcare and Business Support will request representatives with the appropriate level of management responsibility from the Provider to a formal review meeting in order to examine the failures relating to actions required to date. Following this meeting a decision will be made on whether the Provider would be removed from the approved providers list. The Provider will receive a letter within 20 working days to confirm one of the following outcomes:
- (i) the Provider remains on the List of Approved Providers with the Funder reserving the right to add conditions/requirements;
 - (ii) the Provider is suspended from the List of Approved Providers until the Funder is satisfied that the Provider is taking the appropriate steps required to improve in order to fulfil/adhere to the conditions of this agreement in full;
 - (iii) the Provider is removed from the List of Approved Providers and the reasons for removal would be provided in writing.
- 5.17 All Stage three decisions will be reported to Services for Young Children Management Team.
- 5.18 If the Provider wishes to make a complaint regarding the decision made by the Funder, this should be in accordance with schedule 7 of this Agreement.

Schedule 6 - Special Educational Needs and Disabilities (SEND) Local Offer

- 6.1 Providers must promote equality and inclusion, for children with disability or special educational needs. The Provider shall:
- remove barriers of access to free early education
 - work with parents/carers to give each child support to fulfil their potential
 - maintain a good working partnership with their Hampshire County Council Family Support Service to maximise family learning a support and signposting to other appropriate services for the child and/or family.
- 6.2 Providers should utilise the Disability Access Fund and SEND Inclusion Fund to make reasonable adjustments to their environment and delivery to ensure effective support to children with SEND (see Appendix 1 example 6).
- 6.3 Every Local Authority is required to publish information about services they expect to be available in their area for children and young people from birth to 25 who have special educational needs and/or disabilities (SEND); and also SEND services outside of the area which children and young people from their area may use. This is known as the 'Local Offer' and enable parents of SEND children to understand provision of suitable services for their children.
- 6.4 Providers are expected to:
- (a) make information available about their SEND offer to parents;
 - (b) utilise the Local Offer website to develop their own Local SEND offer.
 - (c) publish the setting's Local Offer on the Hampshire Local Offer website:
<https://fish.hants.gov.uk/kb5/hampshire/directory/localoffer.page?familychannel=6> .
 - (d) review their Local Offers on a regular basis (at least annually) and in partnership with parents/carers ('co-production') to ensure their offer reflects any changes to how services are delivered.
- 6.3 Providers who make claims and receive additional SEND Inclusion Support Funding for children at their provision should have an up to

date Local Offer published and revise this regularly in order to receive the additional SEND Inclusion Funding.

FINAL

Schedule 7 - Early Education and Childcare – Complaints

(A) Provider Complaints

- 7.1 In addition to the dispute resolution under paragraph 22 of these Terms and Conditions (dispute resolution does not include and cannot be initiated where the Funder has withheld funds or terminates the agreement under paragraph 12 of these Terms and Conditions). Providers may make a complaint about the Council's operation of the EYE funding scheme, through the Hampshire County Council online complaints process:

<https://www.hants.gov.uk/educationandlearning/complaints>

(B) Parent Complaints - Provider's Responsibility

- 7.1 The Early Education and Childcare statutory guidance for local authorities required local authorities to:
- “have a complaints procedure for parents who are not satisfied that their child has received their early education place”
- 7.2 Parents are encouraged to raise immediate concerns with their Provider. If Parents require further understanding of the EYE scheme they can raise their concern directly with Services for Young Children for clarification before they speak to their Provider.
- 7.3 The Provider should resolve parent complaints using their own published complaints process. In most instances it is expected that the Provider will be able to respond to the complaint, explain why they are unable to resolve the complaint if indeed they cannot and whether the parent needs to take any further action such as submitting their complaint to them in writing.
- 7.4 If a parent is not satisfied that their Provider has dealt with their complaint appropriately the Provider should inform the Funder of this as soon as is practicable and also inform the parent who still has concerns, that they have the right to contact Services for Young Children regarding their complaint.
- 7.5 The Provider should inform the parent that details can be found on the Hampshire County Council website:
- <https://www.hants.gov.uk/educationandlearning/complaints>

- 7.6 The Provider should note this procedure does not duplicate or replace the Provider's own complaints procedures nor does it replace any complaints procedures relating to OFSTED or the complaints procedure of Hampshire County Council.
- 7.7 Where matters of a parent's complaint refers to quality of provision these will be directed to OFSTED.
- 7.8 Matters relating to concerns and issues regarding safeguarding will be directed in accordance with the Local Safeguarding Children's Board processes.

FINAL

- 1 Examples (not exhaustive list) of chargeable consumable items:**
 - Nappies,
 - Sun cream,

- 2 Example (not exhaustive list) of items that are considered as part of the educational element and therefore not chargeable consumable items:**
 - Paint
 - Glue
 - Paper/card
 - Toys
 - Baking supplies
 - Craft supplies
 - Messy play resources

- 3 Examples (not exhaustive list) of items that are considered part of the funding for the delivery in an early years funded place and therefore not chargeable consumable items:**
 - Toilet paper
 - Tissues
 - Soap
 - Hand towels
 - Staff training for Paediatric first aid, food hygiene, safeguarding, other relevant training for early years CPD.

- 4 Examples of 30 hour eligibility checking and confirmation**
 - Two and three year olds**
 - Example 1: Child is two years old, but will be three before next term
 - The parent's code was issued on 7 February and the child's birthday is on 11 March. The child can only claim their place from 1 April.
 - Example 2: Child is two years old, will be three before next term but parent needs to reconfirm. The parent's code was issued on 20 March and the child's birthday is on 10 May. The parent will need to reconfirm their eligibility in June (because parents are required to reconfirm eligibility every 3 months). Unless the parent loses their eligibility at reconfirmation, the child can claim their place from 1 September.

 - Four year olds**
 - Example 3: Child will be four years old before next term and will be starting reception. The parent's code was issued on 7 April and the child's fourth birthday is on 7 May. The provider should ask the parent whether their child will be starting full-time reception in a maintained school or academy from September. If they are, the child will not be

able to claim 30 hours with that provider from September as they cannot claim 30 hours in addition to reception.

- Example 4: Child will be four years old before next term and will not be starting reception. The parent's code was issued on 10 January and child's fourth birthday is on 11 March. The child will be able to claim their 30 hours place from 1 April. Once, they start reception, the child will not be able to claim free childcare in addition to a full-time reception place in a maintained school or academy.

Four and five year olds

- Example 5: Child is in reception. The child's fourth birthday was on 10 May (2017) and the parent's code was issued on 27 September 2017. If the child is in full-time reception in a maintained school or academy when the code is issued, the child will not be able to claim 30 hours with that provider from September.
- Example 6: Child is five but is not of compulsory school age: The parent's code was issued on 18 November (2017) and the child's fifth birthday was on 1st November of the same year. Whilst they have an eligibility code, the child will reach compulsory school age from 1 January 2018 so they will not be able to claim 30 hours. If the parent had applied the term before their child's fifth birthday (i.e. between April and August 2017) the child would be able to claim 30 hours for one term (September-December) until they reached compulsory school age.

Example of Extended entitlement – Grace Period

- Example 7: Child turns three on 3 March; parent successfully applies for 30 hours on 15 March (can take up a place from 1 April). Parent is issued a code with a validity start date of 15 March and end date of 15 June. Parent is able to reconfirm their eligibility for 30 hours up to four weeks before their validity end date (i.e. from 15 May). The parent reconfirms on this date but their circumstances have changed (e.g. job loss) and they are no longer eligible. Therefore, the parent's eligibility ends on 15 June. The grace period will apply from 16 June until 31 December.

5 Example of content to include in an Admissions Policy:

Providers must ensure that their admissions information is clear, transparent and accessible for parents to understand it order to make an informed decision on where to access their entitlement. Example items to include are, for example:

- Available to all in the community
- Accessibility
- Expression of interest for places
- Management of waiting lists – any priorities i.e. siblings
- Allocation of places
- How parents are welcomed to be part of setting

- Monitoring of intake that represents social diversity
- Equal Opportunities policy in place
- Complaint policy in place
- Consulting with families
- Flexible attendance
- Access to/operation of the free Early Years Education scheme
- Fee structure and chargeable items.

6 Examples of making reasonable adjustments for children with SEND

Providers must make reasonable adjustments, it requires thought to be given in advance to what disabled children and young people might require and what adjustments might need to be made to prevent that disadvantage for example:

- the provision of auxiliary aids and services which support a child's access to a good level of development (EYFS profile)
- accessibility of toilets and floor spaces
- skills and experiences of staff
- partnership arrangements with support and health agencies.