

Local Government and Social Care Ombudsmen Report ‘Investigation into a complaint about Nottinghamshire County Council (Reference number: 21 016 061)’

On 3 August 2021, Early Childhood Services within the Children and Families Department received a complaint from a parent in Rushcliffe sharing concerns about a privately owned nursery charging additional fees for her child who was accessing funded childcare. The parent stated that she had raised concerns with the owner of the nursery a number of times but to no avail. The parent contacted the Council to make a complaint about the nursery and asked Early Childhood Services to investigate her complaint.

The specific concerns raised by Mrs X included:

- The nursery charging her a top up fee for the funded hours her child was accessing and being ‘overcharged’
- Lack of clarity and transparency of the invoices sent by the nursery

Early Childhood Services contacted the Nursery on 4 August 2021 to ask for clarification of any top up fees and the transparency of their invoices. The nursery manager responded on the same day, and shared their standard letter which is sent to all parents accessing childcare funding for their 3 and 4 year olds. The letter stated that they have a non-refundable deposit of £50 to guarantee a child’s place, but this would be refunded where children are only accessing their funded childcare entitlements and not any additional privately funded hours. The letter also stated that the nursery applies an additional service fee for snacks and consumables but do state *“If this is not what you are looking for then please speak to us to discuss your options”*. The letter then states, *“we are not allowed to make it conditional that you buy extra hours or services in order to get your funded hours”*.

Early Childhood Services questioned the retainer fee and identified that the parent was also paying for an additional 5.5 hours per week on a privately funded basis, so this was not refundable in line with the Nursery’s policies.

The Council also questioned the ‘top up fee’ and the nursery confirmed that they charge an additional £2.50 for each funded hour a child receives if they attend for half a day; and if a parent uses the nursery over a full day, they are charged £1.80 per hour. They confirmed that this additional fee is to cover consumables such as snacks and nappies. This arrangement is in line with national guidance and Nottinghamshire’s Early Years Provider Agreement¹ on condition that parents have an opportunity to ‘opt out’ of these fees. The information sent by the nursery did not make it explicit that this fee was optional but has implied this in the letter. This led to a formal investigation and financial audit of the nursery by Early Childhood Services.

The Council reviewed the case against national Guidance and understands its Statutory Duty to ensure that children are able to access their funded hours of childcare and early education. According to *Early Education and Childcare Statutory*

¹ [earlyyearsprovideragreement2021-24.pdf \(nottinghamshire.gov.uk\)](#)

guidance for local authorities, June 2018², “Government funding is intended to deliver 15 or 30 hours a week of free, high quality, flexible childcare. It is not intended to cover the costs of meals, other consumables, additional hours or additional services.” Local Authorities should “ensure that providers are aware that they can charge for meals and snacks as part of a free entitlement place and that they can also charge for consumables... although these charges must be voluntary for the parent”.

The sections included in the Nottinghamshire Early Years Provider Agreement that relate to this complaint are:

Section 15 ‘Charging Parents/Carers’

- 15.1 *Government funding is intended to cover the cost to deliver 15 or 30 hours a week of funded, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services.*
- 15.2 *The Provider can charge for meals and snacks as part of a funded entitlement place and they can also charge for consumables such as nappies or sun cream and for services such as trips and yoga. Parents should therefore expect to pay for these, although these charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the funded entitlements 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 should be particularly mindful of the impact of the additional charges on the most disadvantaged parents.*
- 15.4 *The Local Authority shall not intervene where parents choose to purchase additional hours of provision or additional services, providing that this does not affect the parent’s ability to take up their child’s funded place. The Provider shall be completely transparent with parents about any additional charges.*
- 15.6 *The Provider can charge parents a deposit to secure their child’s funded place but shall refund this element of the deposit to parents within a reasonable time scale (which shall be after the child has been included as attending the Provider setting and recorded in their headcount return).*
- 15.7 *The Provider cannot charge parents “top-up” fees (the difference between a provider’s usual fee and the funding they receive from the local authority to deliver funded places) or require parents to pay a registration fee as a condition of taking up their child’s funded place.*
- 15.8 *The Provider shall ensure their invoices and receipts are clear, transparent and itemised, allowing parents to see that they have received their funded entitlement completely free of charge and understand fees paid for additional hours. The Provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific provider. The Provider*

² [Early education and childcare \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

shall not represent the funded entitlement to parents on any invoice as a monetary subsidy or discounted place.

On 5 August 2021, the Nursery was asked specific questions from the Council relating to their adherence to the local Provider Agreement:

- Are these additional charges optional? (15.2)
- Can you provide me with the detail about how these charges are communicated to parents and how their invoices are itemised for them to understand them? (15.8)
- Can you confirm that these additional charges do not constitute “top-up” fees (the difference between a provider’s usual fee and the funding they receive from the local authority to deliver funded places)? (15.7)

On 10 August 2021, the nursery owner told the Council *“We have provided completely free places to children on several occasions, where there has been a need for the child to receive nursery education and the family are struggling... I can see that we have not been as transparent as we could have been within our funding literature. We are taking immediate remedial action and addressing our communications with parents by letting them know about our revised offer”*.

On 27 August 2021, the nursery owner told us that in response to the complaint, they were reviewing and updating their Terms and Conditions which were being appraised by their legal team. After some chasing, the Council finally received two documents on 4 November 2021, the Contract signed by parents for the provision of care outside of the publicly funded Early Education and the letter for parents who were accessing funded childcare for their 3 or 4 year old. The contract now made it clearer that the additional top up fee was optional *“we apply a voluntary additional services fee of £2 per hour for the provision of these items during funded hours. Our standard policy is to provide all these services and include this charge but if that is not what you require, please see us to discuss your options”* and they added a statement for parents to sign in the contract *“I understand that I do not have to agree to purchase extra hours and/or additional services to get my funded hours. XX Nurseries has explained my options and I’ve chosen to take my funded hours within a package of additional hours and/or services”*. The nursery has a copy of the signed agreement with the parent.

The Council also carried out a financial audit of the nursery and found that their finances were satisfactory.

Nottinghamshire County Council, on a number of occasions, recommended that the parent discuss her requirements directly with the Early Years Provider in order to resolve the matter. The Provider reported that they offered a number of meetings and called the parent only to have calls ignored, evidence of this is contained in emails between the Provider and the parent. The parent refused to meet the Provider stating *“I have no interest in meeting with {the manager} after all this time... I am not willing to engage with her on this matter ... I am not willing to waste {time} on a meeting that I have no reason to believe will be productive...”* (direct quotes from the parent’s emails).

The Council also recommended that the parent liaise directly with the Nursery to seek reimbursement her for any additional top up fees that were not used for consumables such as snacks. The parent chose not to contact the nursery and instead submitted a complaint to the Local Government Ombudsman to complain about Nottinghamshire County Council. The Ombudsman submitted their report to the Council in July 2022, and following an appeal by the Council, they submitted their final report in September 2022 rejecting the appeal and stating that the Council was at fault and caused injustice to the parent.

The Ombudsman stated *“Mrs X complained the Council has not ensured her childcare provider, a nursery, issues clear and transparent invoices. And, it has not ensured she has fair access to a free place. She says she has spent time seeking clarity and suffered distress. To remedy the injustice caused they recommended that the Council:*

- *apologise to Ms X in writing*
- *pay Ms X £100 for time and trouble*
- *pay Ms X £100 for distress and uncertainty*
- *refund Ms X 50% of the additional charges she has paid from January 2020 to the date Y left the nursery in February 2022. The Council should liaise with Ms X and the nursery to gather the information it needs to action this; and*
- *review the nursery’s policies and practices, taking action as needed to ensure it complies with the Council’s provider agreement in respect of fees and invoicing. It should tell us the outcome of this review and any actions taken”.*

The Council is now progressing the recommendations of the Local Government Ombudsman report. In addition, the Council is sharing information with the Department for Education and the Local Government Association as the response by the Local Government may have repercussions on all top tier Local Authorities who fulfil the statutory duties laid out in the Early Education and Childcare statutory guidance and yet may be liable for providing refunds to parents who have paid external childcare providers rather than Local Authorities.

Supporting Documents:

- Department for Education ‘Early Education and Childcare Statutory Guidance for Local Authorities, June 2018 [Early education and childcare \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- Nottinghamshire Early Years Provider Agreement for Funded Early Years Provision 2021-2024 [earlyyearsprovideragreement2021-24.pdf \(nottinghamshire.gov.uk\)](https://www.nottinghamshire.gov.uk)