



## **Nottinghamshire County Council**

# **PROVIDER AGREEMENT for EARLY YEARS PROVISION FREE OF CHARGE AND FREE CHILDCARE– 2017**

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## Guidance Notes

This Provider Agreement has been prepared in line with the DfE Model Agreement 2017. The recommended clauses from section 2 of the Model Agreement have been incorporated into this document with some minor grammar changes. These clauses are shown in: **Calibri font**.

The Model Agreement recommends local requirement drafting is also included within the Provider Agreement. These clauses are shown in: **Times New Roman font**.

This Agreement is made between Nottinghamshire County Council (“the Local Authority”) and the Provider named at the end of this Agreement.

## **BACKGROUND**

In exercising its duty under s7(1) of the Childcare Act 2006 and regulation 39 of the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016, the Local Authority has developed this Agreement (which is based on the requirements in the Department for Education Model Agreement) to document the provision of free of charge childcare in Nottinghamshire for:

- (i) The most disadvantaged two year olds and parents of three and four year olds - the universal entitlement of 15 hours; and
- (ii) Working parents of three and four year olds who are entitled to an additional 15 hours on top of the universal entitlement – 30 hours total, the extended entitlement.

The Agreement applies to the following early years providers:

- (i) Early years providers other than a childminder registered on the Ofsted Early Years Register;
- (ii) Childminders registered on the Ofsted early years register;
- (iii) Childminders registered with a childminder agency that is registered with Ofsted;
- (iv) Schools and academies who provide early years services for 2, 3 and/or 4 year olds;
- (v) Independent schools and academies taking children age two and over and which are exempt from registration with Ofsted as an early years provider.

## **1 KEY LOCAL AUTHORITY RESPONSIBILITIES**

The Local Authority shall:

- 1.1 secure a free entitlement place for every eligible child in their area;
- 1.2 work in partnership with providers to agree how to deliver free entitlement places;
- 1.3 be clear about its role and the support on offer locally to meet the needs of children with special educational needs and/or disabilities (SEND) as well as their expectations of Providers; and
- 1.4 contribute to the safeguarding and promote the welfare of children and young people in their area.

## **2 KEY PROVIDER RESPONSIBILITIES**

The Provider shall:

- 2.1 comply with all relevant legislation and insurance requirements;
- 2.2 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. This means that the Provider should be clear and communicate to parents details about the days and times that they offer free places, along with their services and charges. Those children accessing

the free entitlements should receive the same quality and access to provision;

- 2.3 follow the Early Years Foundation Stage (EYFS) and have clear safeguarding policies and procedures in place that link to the Local Authority's guidance for recognising, responding, reporting and recording suspected or actual abuse.
- 2.4 have arrangements in place to support children with special educational needs and/or disabilities (SEND). These arrangements should include a clear approach to identifying and responding to SEND. Providers should utilise the SEN inclusion fund and Disability Access Fund (where applicable / eligible) to deliver effective support, whilst making information available about their SEND offer to parents. The Betterstart module of the Provider Portal allows monitoring of the use and impact of supplementary funding for the most vulnerable children.

### **3 SAFEGUARDING**

- 3.1 The Local Authority has overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area and shall comply with its requirements under the 1989 and 2004 Children Acts.
- 3.2 Further to paragraph 2.3, the Provider shall ensure a lead practitioner must take responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect. The Provider shall have regard to 'Working Together to Safeguard Children' 2015 guidance. In addition, the Provider shall:
  - ensure their employees are suitable for working with children and are recruited in line with a Safe Recruitment policy
  - identify a Deputy Safeguarding Lead in the event of the Safeguarding Lead being absent
  - make sure that training is available to all staff with minimum 3 yearly updates in line with NCSB requirements.
  - make sure systems are in place for managing any allegations made against adults working with children
- 3.3 The Provider shall adhere to the Nottinghamshire Safeguarding Children's Board (NSCB) Safeguarding Children Procedures as detailed on the website,  
<http://cms.nottinghamshire.gov.uk/home/learningandwork/caringforchildren/socialcareandhealth/nscb.htm>
- 3.4 The Provider shall make a referral to the Disclosure and Barring Service where a member of staff is dismissed where they have harmed a child or put a child at risk of harm.
- 3.5 The Provider shall comply with the Local Authority's Early Help Processes to ensure that the individual needs of children, particularly those most vulnerable, are identified early and are appropriately met. Further information can be found:  
<http://www.nottinghamshire.gov.uk/caring/childrenstrust/pathway-to-provision/earlyyearsintervention>

## **4 ELIGIBILITY**

- 4.1 The Provider shall check original copies of documentation to confirm a child has reached the eligible age on initial registration for all free entitlements. The Provider can retain paper or digital copies of documentation to enable the Local Authority to carry out audits and fraud investigations. Where a Provider retains a copy of documentation this must be stored securely and deleted when there is no longer a good reason to keep the data. (See also data privacy guidance set out in Annex A: Parent declaration, part 6). If copies are not retained, the Provider shall acknowledge on the Parent declaration that it has seen originals of the identification.
- 4.2 The Provider shall offer places to eligible two-year-olds on the understanding that the child remains eligible until they become eligible for the universal entitlement for three- and four-year-olds.
- 4.3 The Local Authority shall ensure that a child has a free entitlement place no later than the beginning of the term following the child and the parent meeting the eligibility criteria for the free entitlements.
- 4.4 Alongside the 30 hours eligibility code, which is the child's unique 11-digit number, and original copies of documentation (see paragraph 4.1), a Provider must acquire written consent from, or on behalf of, the parent to be able to receive confirmation and future notifications from the Local Authority of the validity of the parent's 30 hours eligibility code. The Provider shall use the parental declaration form at Annex A which asks the parent for the necessary information and consents.
- 4.5 Once the Provider has received written consent from the parent, they shall verify the 30 hours eligibility code with the Local Authority.
- 4.6 The Local Authority shall confirm the validity of 30 hours eligibility codes to allow the Provider to offer 30 hours places for eligible three- and four-year-olds. The Local Authority will provide a validity checking service to the Provider to enable them to verify the 30 hours eligibility code swiftly and efficiently.
- 4.7 Eligibility Checking Service (ECS)
  - 4.7.1 The ECS allows the Local Authority to make instant checks for code validity.
  - 4.7.2 The Local Authority shall provide the following validity checking service for Providers:
    - 4.7.2.1 The Provider portal spring release will contain a Provider ECS check facility, and display of children's eligibility status and validity periods to both Providers and Local Authority staff. The Provider portal summer release will see an automatic recheck eligibility facility, notification of children nearing the end of their eligibility, changes to the headcount portal to support claims for extended hours and changes to the Early Years back office to support the setup, management and payment of the extended hours.
- 4.8 The Local authority shall complete audit checks to review the validity of eligibility codes for children who qualify for 30 hours free childcare at 6 fixed points in the year, both at half-term and at the end of term across the

year (in line with the dates as listed at table A below). The Local Authority shall notify a Provider where a parent has fallen out of eligibility and inform them of the grace period end date.

**Table A**

<b>Date Parent receives ineligible decision on confirmation:</b>	<b>LA audit date:</b>	<b>Grace Period End date:</b>
1 Jan-10 Feb	11 February	31 March
11 Feb-31 Mar	1 April	31 August
1 April-26 May	27 May	31 August
27 May-31 Aug	1 September	31 December
1 Sep-21 Oct	22 October	31 December
22 Oct-31 Dec	1 January	31 March

## **5 THE GRACE PERIOD**

- 5.1 A child will enter the grace period when the child's parents cease to meet the eligibility criteria set out in the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016, as determined by HMRC or a First Tier Tribunal in the case of an appeal.
- 5.2 The Local Authority can use the ECS (see paragraph 4.7) to access information about whether a child has ceased to meet the eligibility criteria and entered the grace period. The grace period end date will automatically be applied to eligibility codes.
- 5.3 The Local Authority shall continue to fund a place for a child who enters the grace period as set out in the Early Education and Childcare Statutory guidance for local authorities 2017.
- 5.4 The Local Authority shall provide the following arrangements for informing Providers of a child's grace period:
  - 5.4.1 A report shall be issued via the Provider portal on (at least) a half termly basis naming children coming to the end of a grace period.

## **6 FLEXIBILITY**

- 6.1 Provision must be offered within the national parameters on flexibility as set out in Section A2 of Early Education and Childcare Statutory guidance for local authorities (see Annex B).
- 6.2 The Provider shall work with the Local Authority and share information about the times and periods at which they are able to offer free entitlements to support the Local Authority to secure sufficient stretched and flexible places to meet parental demand in the Local Authority. The Provider shall also make information about their offer and admissions criteria available to parents at the point the child first accesses provision at their setting.
- 6.3 The parties shall use the following process for children receiving free entitlement at multiple providers:

- 6.3.1 The Provider shall submit a headcount return via the Provider portal;
- 6.3.2 The Local Authority shall review the headcount return and resolve any double claims issues prior to payment;
- 6.3.3 The Provider shall retain copies of all parent declaration forms (Annex A) which record the information where hours are attended at different providers and provide the basis for claims made. Copies shall be retained for as long as the child is in the Provider setting and until the forms are no longer required to fulfil the purposes for which they were originally submitted (whichever is the later);
- 6.3.4 The parent declaration form (Annex A) also contains details of who the parent chooses as the main childcare provider for the purposes of the Early Years Pupil Premium and Disability Access Fund.

## **7 PARTNERSHIP WORKING**

- 7.1 The Local Authority shall support the following partnerships:
  - i. Local Authority and Provider.
  - ii. The Provider working with other providers, including childminders, schools and organisations.
  - iii. The Providers and parents.
  - iv. Local Authority and parents.
- 7.2 The Local Authority shall promote partnership working between different types of providers, including childminders, across all sectors and encourage more providers to offer flexible provision, alongside other providers.
- 7.3 The Provider shall work in partnership with parents, carers and other providers to improve provision and outcomes for children in their setting. An interactive toolkit:  
  
*<http://www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-toolkit>*  
  
has been developed to help providers set up or join a partnership, maximise the benefits of working together and tackle the challenges joint working can bring.
- 7.4 The Provider shall discuss and work closely with parents to agree how a child's overall care will work in practice when their free entitlement is split across different providers, such as at a maintained setting and childminder, to ensure a smooth transition for the child.

## **8 SPECIAL EDUCATIONAL NEEDS AND DISABILITIES**

- 8.1 The Local Authority shall strategically plan support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in their local area as per the Special Educational Needs and Disability code of practice: 0 to 25 years (January 2015).
- 8.2 The Provider shall ensure owners and all staff members are aware of their duties in relation to the SEND Code of Practice January 2015 and the Equality Act 2010.

- 8.3 The Local Authority shall be clear and transparent about the support on offer in their area, through their Local Offer, so parents and providers can access that support.
- 8.4 The Provider shall be clear and transparent about the SEND support on offer at their setting and make information available about their offer to support parents to choose the right setting for their child with SEND.

## **9 SOCIAL MOBILITY AND DISADVANTAGE**

- 9.1 The Local Authority shall promote equality and inclusion, particularly for disadvantaged families, looked after children and children in need by removing barriers of access to free places and working with parents to give each child support to fulfil their potential.
- 9.2 The Provider shall ensure that they obtain parent data via the Parental Declaration form to enable NCC to identify children eligible for disadvantage and deprivation supplements, including Early Years Pupil Premium (EYPP).
- 9.3 The Provider will use EYPP and Deprivation supplements to support improved outcomes for eligible children. The Betterstart module of the Provider Portal allows monitoring of the use and impact of supplementary funding for the most vulnerable children.

## **10 QUALITY**

- 10.1 The EYFS statutory framework is mandatory for all schools that provide early years provision and Ofsted-registered early years providers in England. The EYFS sets the standards that all early years providers must meet to ensure that children learn and develop well and are kept healthy and safe.
- 10.2 Ofsted are the sole arbiter of quality for all free entitlements and Ofsted and inspectorates of independent schools have regard to the EYFS in carrying out inspections and report on the quality and standards of provision.
- 10.3 The Local Authority has a legal duty to provide information, advice and training on meeting the requirements of the EYFS, meeting the needs of children with SEND and on effective safeguarding and child protection for providers who are rated less than 'Good' by Ofsted or newly registered providers.
- 10.4 Provision must be offered in accordance with the national parameters on quality as set out in Section A3 of Early Education and Childcare Statutory Guidance for Local authorities and the EYFS statutory framework (Annex B).

## **11 BUSINESS PLANNING**

- 11.1 The Local Authority has established the following process to support payment and delivery of free entitlements:
  - 11.1.1 The table below summarises the process in place:
    - 11.1.1.1 Headcounts take place once per half term;



- 11.1.1.2 The headcount portal is open for Providers to submit their data as indicated in the “Task opens” column;
- 11.1.1.3 The Provider should submit their data prior to the date when the Local Authority extract the data shown in the “Data extract” column;
- 11.1.1.4 Following appropriate checks, the Local Authority calculates estimate payments to Providers on the dates shown in the “Estimate Payment” column;
- 11.1.1.5 The balance payment shall be paid in accordance with the date specified in the “Balance Payment” column.

6 'actual' headcount portal tasks per year	No. weeks	Financial year	Task opens	Data extract	Estimate Payment	Task closes	Balance Payment	Payment split (Est/Bal)
Autumn 1	6	2017-18	Mid July	Mid August	Early September	Late September	Early October	100/100
Autumn 2	8	2017-18	Early October	Late October	Early November	Late November	Early December	50/50
Spring 1	6	2017-18	Early December	Late December	Early January	Late January	Early February	50/50
Spring 2	5	2017-18	Early February	Mid February	Late February	Late February	Mid March	50/50
Summer 1	7	2018-19	Mid March	Late March	Early April	Late April	Early May	50/50
Summer 2	6	2018-19	Early May	Late May	Early June	Late June	Early July	50/50
Autumn 1		2018-19	Mid July					

Exact dates will be published during the 2nd half of summer term 2017

- 11.2 The Local Authority shall not charge providers disproportionate penalties for providing late or incomplete information leading to additional administration in the processing of free entitlements. Any charges should be reasonable and proportionate to the inconvenience or costs incurred to the Local Authority as a result of the lateness and local authorities will ensure charges are clearly communicated to providers. The Local Authority shall notify Providers in writing in advance of any charges it proposes to implement for the late or incomplete submission of information.
- 11.3 The Local Authority should not carry out audit regimes which are disproportionate or are unnecessarily burdensome to providers. The Local Authority has the following audit arrangements and requirements:
  - 11.3.1 The Provider shall maintain parent / Provider contracts and parental declaration forms for each claimed child, and retain these for audit purposes; and
  - 11.3.2 The Local Authority will undertake random audit checks each term to ensure that the Provider is fully compliant with this Agreement. The Providers shall comply with all statutory financial regulations that govern their legal status (as applicable) (for example Charities Commission, Companies Act, HMRC).
- 11.4 The Provider shall ensure they submit timely and accurate information, including, but not limited to, headcount data, census data, parental declarations and invoices, as per the financial guidelines of the Local Authority. Failure to do so may result in inaccurate, delayed or suspended funding.
- 11.5 The Provider shall maintain accurate financial and non-financial records relating to free entitlement places and shall give the Local Authority access on reasonable notice to all financial and non-financial records relating to free entitlement places funded under the provider agreement, subject to confidentiality restrictions.

## **12 CHARGING**

- 12.1 Government funding is intended to cover the cost to deliver 15 or 30 hours a week of free, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services.
- 12.2 The Provider can charge for meals and snacks as part of a free entitlement place and they can also charge for consumables such as nappies or sun cream and for services such as trips and yoga. 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 free 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.
- 12.3 The Provider should deliver the free entitlements 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.
- 12.4 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 free place. The Provider shall be completely transparent about any additional charges.
- 12.5 The Provider shall publish their admissions criteria and ensure parents understand which hours/sessions can be taken as free provision. Not all providers will be able to offer fully flexible places, but the Provider shall work with parents to ensure that as far as possible the pattern of hours are convenient for parents' working hours.
- 12.6 The Provider can charge parents a deposit to secure their child's free place but shall refund the deposit in full 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).
- 12.7 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 free places) or require parents to pay a registration fee as a condition of taking up their child's free place.
- 12.8 The Provider shall ensure their invoices and 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. 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 shall not represent the free entitlement to parents on any invoice as a monetary subsidy or discounted place.

## **13 FUNDING**

- 13.1 The Local Authority shall pay all providers, particularly childminders, monthly by September 2018 unless a provider requests and the Local Authority agrees to continue an existing alternative sustainable method of payment.
- 13.2 The Provider shall:

- 13.2.1 accurately complete and submit headcount and other necessary data returns by the agreed date;
- 13.2.2 respond immediately to Local Authority queries in respect of such data (including any double claim queries)  
in order to support the Local Authority to make payment.
- 13.3 The arrangements set out in clause 11.1 shall apply in respect of the Local Authority's local funding process and timetable.

#### **14 COMPLIANCE**

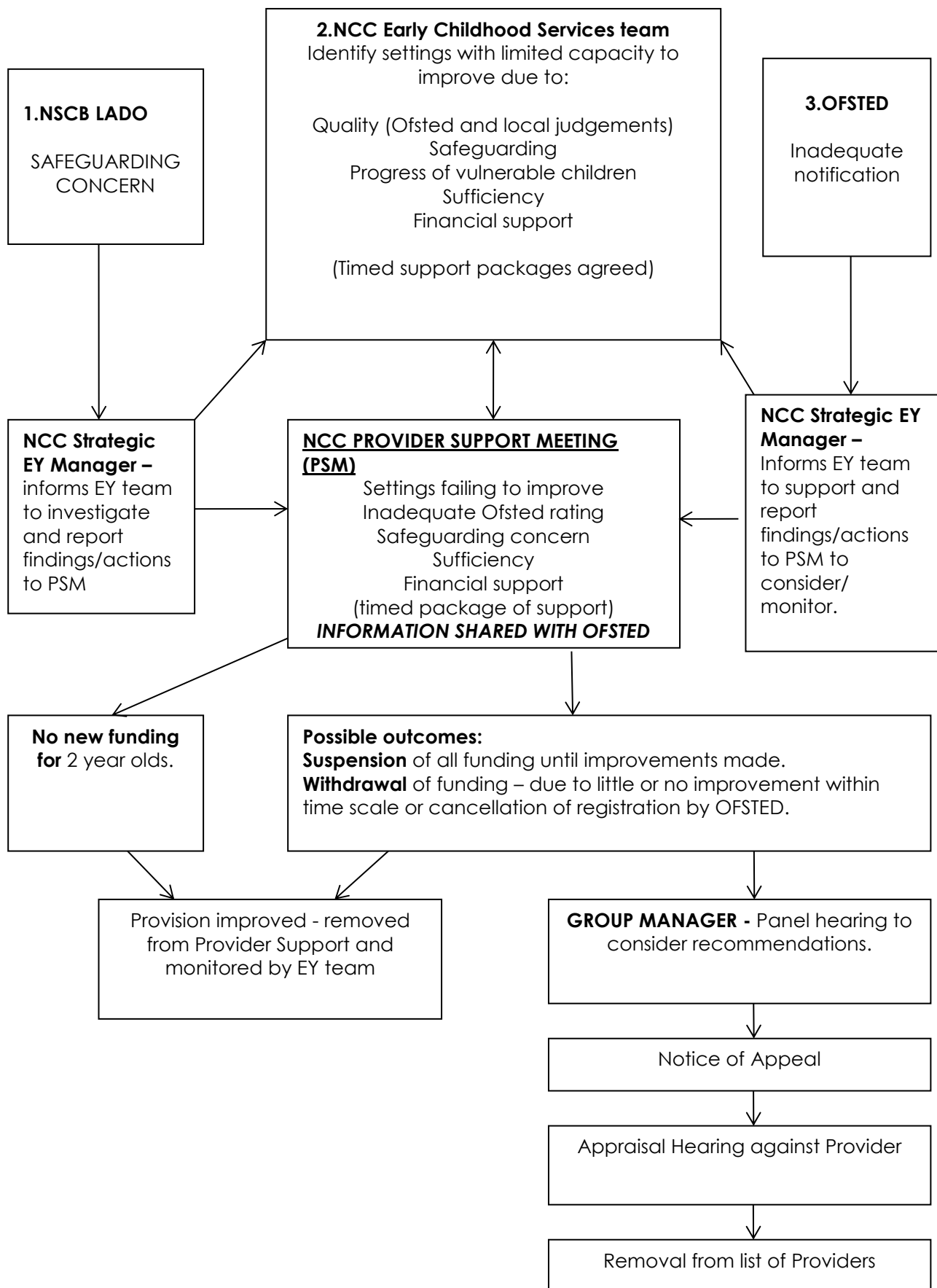
- 14.1 The Local Authority can carry out checks and/or audits on the Provider to ensure compliance with the requirements of delivering the free entitlements.
- 14.2 Each year the Local Authority will review approximately 10% of providers in receipt of funding, to ensure compliance with the provider agreement. This puts necessary checks in place to ensure providers are correctly claiming their funding and that parents are clear about their entitlement.
- 14.3 Generally 10 working days' notice will be given to providers of a compliance review.
- 14.4 Sites requiring a compliance visits will be selected from the full range of early years providers delivering funded places, using the following triggers/criteria:
  - 14.4.1 Complaints from parents
  - 14.4.2 Ofsted reports
  - 14.4.3 RAG rating
  - 14.4.4 Annual conversation visit
  - 14.4.5 Non-signature of Provider Agreements
  - 14.4.6 Late invoicing
  - 14.4.7 Non-use of Portal
  - 14.4.8 In receipt of other LA funding, ie SEN funding.
- 14.5 The compliance review will include a site visit, to examine the following documentation, which providers should have available on the day of the visit:
  - 14.5.1 Attendance registers and Signing In & Out Sheets for the agreed term (Autumn, Spring or Summer)
  - 14.5.2 Signed parent declaration forms for every child for which the funding is claimed, for the agreed term (Autumn, Spring or Summer)
  - 14.5.3 Evidence of confirmation of ID (i.e. birth certificate, NHS 'red book', passport) for every child for which the funding is claimed, for the agreed term (Autumn, Spring or Summer)
  - 14.5.4 Evidence of eligibility for every 2 year old child for which funding is claimed for the agreed term (Autumn, Spring or Summer)
  - 14.5.5 Current Insurance Certificate and Schedule. Showing minimum levels of cover i.e. £10m employer and £5m public liability cover.
  - 14.5.6 Documentation to support any short term absences (where applicable).

- 14.5.7 Staff rotas for the census week of the three terms and the week prior to the visit.
  - 14.5.8 A copy of the fees/charges.
  - 14.5.9 Copies of invoices to parents, upon request (these will be randomly selected).
  - 14.5.10 Copy of funded places publicity material given to parents/carers
  - 14.5.11 Evidence of staff qualifications
  - 14.5.12 Access to Policy and procedural documents for the provision
- 14.6 After the review, the findings will be shared with the provider, including any recommendations for any changes in practice required, to ensure compliance with the provider agreement. This would include details of any funding that needs to be returned to the Local Authority and details of any follow-up support to address any issues identified.

## **15 TERMINATION OF AGREEMENT AND WITHDRAWAL OF FUNDING**

- 15.1 Suspension of registration by Ofsted or a breach of statutory requirements or safeguarding issues may result in the termination of the arrangement and withdrawal of funding.
- 15.2 Where the Provider is at risk of having funding withdrawn they shall be referred to the Local Authority's Early Years Provider Support Group who shall assess the situation and where possible, identify support for the Provider to improve their practice. This will include setting clear milestones with timescales for action / improvements to be achieved. If the Provider does not work proactively with the Local Authority to improve practice, fails to demonstrate sufficient quality improvement and/or the concerns are such that the group risk assess it is not safe for children to be in the setting, the Local Authority shall refer the Provider to case conference. At case conference, a decision may be made to suspend and/or withdraw funding and remove the Provider from the Nottinghamshire Directory of Providers. The Provider shall have the right to appeal against the removal from the Directory by using the Local Authority's complaints procedure referenced in clause 17.
- 15.3 The Local Authority aims to secure the best possible outcomes for children in Nottinghamshire and the Provider may be removed from the Directory if it:
  - 15.3.1 Receives an inadequate Ofsted inspection judgement and the Local Authority feels that the Provider does not have either the capacity or the commitment to improve their quality to meet EYFS standards;
  - 15.3.2 (in the case of a childminder registered with an early years childminder agency only), the agency ceases to meet the grade of "effective" in a published early years childminder agency inspection report; or (ii) an early years childminder agency inspection report is published in respect of the agency and the agency is not awarded a grade of "effective";
  - 15.3.3 Fails to act on quality improvement guidance from Ofsted or the Local Authority over a 12 month period;
  - 15.3.4 Fails to correct any breaches of the financial requirements making reparation to parents/carers within 25 working days of notification by the Local Authority;

- 15.3.5 Repeatedly breaches the financial requirements of the funding provided for the free entitlement, as evidenced by the Early Years Data Management Officers;
  - 15.3.6 Fails to make reasonable adjustments in line with the Equality Act 2010, in order to meet the needs of disabled children;
  - 15.3.7 Does not have a named SENCO;
  - 15.3.8 Is unable to evidence that all staff, including the designated person, have attended at least the Introduction to Safeguarding training (in line with NSCB requirements) and accessed regular refresher training (as a minimum every 3 years) with regard to safeguarding;
  - 15.3.9 Fails to complete required documentation, for example:
    - 15.3.9.1 EYFS Profile information;
    - 15.3.9.2 Early Years Census;
    - 15.3.9.3 Ofsted Self Evaluation Form, or equivalent;
    - 15.3.9.4 Headcount data ;
    - 15.3.9.5 Provider (EEF) Agreement signed annually;
  - 15.3.10 Is suspended by Ofsted more than once in a 12 month period;
  - 15.3.11 Is deregistered by Ofsted;
  - 15.3.12 Is not meeting the independent school standard in relation to the spiritual, moral, social and cultural development of pupils;
  - 15.3.13 Is not actively promoting fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
  - 15.3.14 Is promoting as fact views or theories which are contrary to established scientific or historical evidence and explanations.
- 15.4 The following flow chart sets out Provider support and de-registration for the provision of funded places:



15.5 The Local Authority does not waive the rights set out in this clause if it does not act immediately, a slower evidence based approach may be required.

## **16 COMPLAINTS PROCESS**

16.1 The Local Authority's complaints procedure is available as follows:

[www.nottinghamshire.gov.uk/theCouncil/contact/comments/](http://www.nottinghamshire.gov.uk/theCouncil/contact/comments/)

16.2 The Provider shall ensure they have a complaints procedure in place that is published and accessible for parents who are not satisfied their child has received their free entitlement in the correct way, as set out in this agreement and in Early Education and Childcare Statutory guidance for local authorities (Annex B).

16.3 If a parent or Provider is not satisfied with the way in which their complaint has been dealt with by the Local Authority or believes the Local Authority has acted unreasonably, they can make a complaint to the Local Authority Ombudsman. Such complaints will only be considered when the local complaints procedures have been exhausted.

## **17 APPEALS PROCESS**

17.1 The Provider may be denied approval to offer the free entitlements or have their funding withdrawn as set out above. The Provider can appeal against that decision.

17.2 The Local Authority's appeals process is as follows:

17.3 There is a specific appeals procedure for parents who are not satisfied that their child has received their child's free entitlement. This includes appeals against maintained early year's provision (in schools). The full details of appeals for parents are available on request.

17.4 The initial stage of the appeals process is as set out in the Local Authority complaints process at clause 16.1.

17.5 Should the Provider not be satisfied with their treatment under the appeals process they may make an appeal to the Local Authority Ombudsman after the appeal process has been exhausted. No Provider will be removed from the Nottinghamshire Directory of Providers until such time as the appeal process has been completed.

17.6 Reapplication from settings to be included on the Nottinghamshire Directory of Providers will not be considered until all required actions and conditions have been fully carried out.

## **18 INSURANCE**

18.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance in respect of public liability, employers liability and professional indemnity with an adequate level of cover (or such cover as required by Law) (the Required Insurances). The cover shall be 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. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

18.2 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the agreement.

## **19 COMPLIANCE WITH LAW**

19.1 The Local Authority and the Provider shall comply with all Laws.

19.2 The following frameworks and legislation underpin this agreement:

19.2.1 Early Education and childcare, Statutory guidance for Local authorities 2017

19.2.2 Childcare Act 2006

19.2.3 Childcare Act 2016

19.2.4 Equality Act 2010

19.2.5 School admissions code 2014

19.2.6 Statutory framework for the early years foundation stage 2014

19.2.7 Local Authority, (Duty to Secure Early Years Provision Free of Charge) Regulations 2014

19.2.8 The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016

19.2.9 Special educational needs and disability code of practice: 0 to 25 years 2015

19.2.10 Data Protection Act 1998

## **20 CHANGES IN LAW**

The Local Authority shall have the right to vary this agreement (and the Provider shall accept such change) where the change is necessary for the Local Authority to comply with any change in Law or guidance issued by the Department for Education.

## **21 FREEDOM OF INFORMATION**

The Provider acknowledges that the Local Authority is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and co-operate with the Local Authority (at the Provider's expense) to enable the Local Authority to comply with these information disclosure requirements.

## **22 DATA PROTECTION**

The Provider shall comply with any notification requirements under the Data Protection Act 1998 (DPA) and both parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.

## **23 CONFIDENTIALITY**

23.1 Subject to clause 23.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Authorised Representative from making any disclosure to any person of any matters relating hereto.

23.2 Clause 23.1 shall not apply to any disclosure of information:

- (a) required by any Law, provided that clause 23.1 shall apply to any disclosures required under the FOIA or the EIR;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;



- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 23.1;
- (d) by the Local Authority of any document to which it is a party and which the parties to this agreement have agreed contains no Commercially Sensitive Information;
- (e) to enable a determination to be made under clause 24;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Local Authority to any other department, office or agency of the Government; and
- (h) by the Local Authority relating to this agreement and in respect of which the Provider has given its prior written consent to disclosure.

## 24 DISPUTES

24.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 20 Working Days of service of the Dispute Notice, the Dispute shall be referred to the Group Manager for Early Childhood Services of the Local Authority and [SENIOR OFFICER TITLE] of the Provider who shall attempt in good faith to resolve it; and
- (c) if the Group Manager for Early Childhood Services of the Local Authority and [SENIOR OFFICER TITLE] of the Provider are for any reason unable to resolve the Dispute within 5 Working Days of it being referred to them, the Dispute shall be referred to the Service Director for Children, Families and Cultural Services of the Local Authority and the Chief Executive of the Provider who shall attempt in good faith to resolve it; and
- (d) if the Service Director for Children, Families and Cultural Services of the Local Authority and Chief Executive of the Provider are for any reason unable to resolve the Dispute within 5 Working Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 10 Working Days after the date of the ADR notice.

- 24.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute.
- 24.3 If the Dispute is not resolved within 40 Working Days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 40 working Days, or the mediation terminates before the expiration of the said period of 40 Working Days, the Dispute shall be finally resolved by the courts of England and Wales.

## **25 DEFINITIONS AND INTERPRETATION**

- 25.1 The definitions and rules of interpretation in this clause apply in this agreement.
- 25.1.1 Authorised Representative: the persons respectively designated as such by the Local Authority and the Provider who have day to day management of this agreement.
- 25.1.2 Commercially Sensitive Information: the information comprising the information of a commercially sensitive nature relating to the Provider, its intellectual property rights or its business or which the Provider has indicated to the Local Authority that, if disclosed by the Local Authority, would cause the Provider significant commercial disadvantage or material financial loss.
- 25.1.3 Laws: any present or future statute, statutory instrument or byelaw, or any present or future regulation, directive, order, code of practice or requirement of any statutory, public, local, UK or European or other competent authority or court of jurisdiction and includes any modification, extension or re-enactment of any of the same in force from time to time and all other instruments, orders (including but not limited to obligations in relation to the environment (including without limitation the Environmental Protection Act 1990 (as amended)), noise pollution and health and safety) and regulations made pursuant to statute.
- 25.2 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

I wish to join/remain on Nottinghamshire's Directory of Providers of Early Education and be eligible to claim Funding. Please complete all sections in full, in BLOCK CAPITALS

**PROVIDER DETAILS ("the Provider")**

NAME OF SETTING:

ADDRESS:

POSTCODE:

EMAIL:

TEL:

NAME OF REGISTERED PERSON:

OFSTED REGISTRATION NUMBER:

I have read and understood the Provider Agreement.

Name..... Date.....

Position.....

THE LOCAL AUTHORITY HEREBY CONFIRMS TO UPHOLD ITS COMMITMENT TO SUPPORTING PROVIDERS OF EARLY EDUCATION AS OUTLINED WITHIN THIS AGREEMENT

*PLEASE RETURN THIS FORM TO*

**Email: [earlychildhoodservices@nottscc.gov.uk](mailto:earlychildhoodservices@nottscc.gov.uk)**

**Address:**

**Early Childhood Services  
Children Families and Cultural Services  
Nottinghamshire County Council  
County Hall  
Nottingham  
NG2 7QP**

## **Annex A**

### **Parent Declaration Form and supporting information**



Parent Declaration  
Form v1.pdf

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General  
Information for Pare

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## **Annex B**

### **Early Education and Childcare Statutory Guidance 2017**



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