



17/47+
appendices
1, 2 & 3
DECISION
TO BE
MADE

Notice of KEY Executive Decision

Subject Heading:	Implementation of Havering Early years directory and funding agreement 2017-2020
Cabinet Member:	Councillor Robert Benham: Cabinet Member for Children & Learning
SLT Lead:	Tim Aldridge, Director Children's Services
Report Author and contact details:	Pooneeta Mahadeo School Organisation Manager pooneeta.mahadeo@havering.gov.uk Tel: 01708 431092
Policy context:	Local authorities are required to have due regard to this model agreement in the exercise of their 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.
Financial summary:	Local authorities are allocated funding for early years provision through the Early Years Block of the Dedicated Schools Grant (DSG). For 2017/18, the allocation to Havering including funding allocations made for EYPP (Early years Pupil Premium) and DAF (Disability Access Fund) is £14,847,000. Providers receive funding for the free entitlement to early years provision based on locally agreed hourly base rates and supplements for deprivation.

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Reason decision is Key	Expenditure of £500,000 or more Significant impact across the borough
Date notice given of intended decision:	20/04/2017
Relevant OSC:	Children & Learning Overview and Scrutiny
Is it an urgent decision?	No
Is this decision exempt from being called-in?	No

The subject matter of this report deals with the following Council Objectives

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input checked="" type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Place an X in the [] as appropriate

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

- To approve and implement the Havering Early years directory and funding agreement from 1 September 2017- Appendix 2
- Authorise the completion of agreements with each child care provider providing nursery places in Havering.

AUTHORITY UNDER WHICH DECISION IS MADE

Part 3, Section 2.5 gives the relevant Cabinet Member authority to make this decision, namely powers (j) To consider and recommend plans in respect of the portfolio allocated. And (q) To agree minor matters and urgent or routine policy matters.

STATEMENT OF THE REASONS FOR THE DECISION

1. Havering Council, the Local Authority, has a statutory duty to secure sufficient nursery education for two, three and four year olds in a diverse range of high quality provision in order to meet parental choice. In order to achieve this, the Council works alongside all childcare providers from the Maintained, Private, Voluntary and Independent (PVI) sector including preschools, nurseries and childminders.
2. The Government provides grant funding to Local Authorities to cover the costs of free nursery places for two, three and four year olds.
3. This agreement is designed to explain the financial arrangements for making payments to childcare providers in respect of the free places that they provide. It is also written to present Havering's directory and funding agreement alongside the Central Government's Early Education Statutory Guidance for Local Authorities for the delivery of free early education for two, three and four year olds and to secure sufficient childcare.
4. The agreement applies to the 15 hour entitlement for the most disadvantaged two-year-olds, the 15 hour entitlement for parents of three-and four-year-olds (the universal entitlement) and the 30 hours entitlement for working parents of three-and-four-year-olds (the extended entitlement).
5. The agreement has been developed in partnership with early years providers and local authorities. It is intended to bring greater consistency to provider agreements across all local authorities and all types of providers.
6. This agreement is for:
 - Early years providers who are referred to as 'providers' and include:
 - Early years providers and childminders registered on the Ofsted Early Years Register;
 - Childminders registered with a childminder agency that is registered with Ofsted;
 - Independent Schools and Academies taking children age two and over and

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- which are exempt from registration with Ofsted as an early years provider.
- Independent Schools and Academies taking children age two and over and which are exempt from registration with Ofsted as an early years provider.
7. The DfE launched a model agreement in March 2017 - Appendix 1 which sets out the department's expectations on what should be included in agreements between local authorities and providers (provider agreements) and refers to early years provision free of charge (sections 7 and 7A of the Childcare Act 2006) and free childcare (section 2 of the Childcare Act 2016) as the 'free entitlement(s)' or 'free hours' or a 'free place'. The department expects the standard headings and wording provided in Section 2 of the model agreement to be used in all provider agreements with further detail to set out local level process where indicated.
- Havering's Early Years Directory and Funding Agreement builds on the guidance issued by the DfE and is intended to enable providers and the Local Authority to understand their respective roles and to ensure that the Early Years Free early education delivers the best outcomes for children and their families.
8. The DfE recommends that local authorities include the following provisions in their provider agreements:
- A right to unilaterally vary the agreement to reflect changes in legislation and departmental guidance
 - A clause stating that references to legislation will be to that legislation as amended from time to time, without express change in the model agreement and/or provider agreement
 - Freedom of information provisions.
 - Termination and enforcement clauses to cover all enforcement stages up to and including termination of the agreement. The local authority should also make clear that they do not waive the right to act if they do not act immediately (a slower evidence based approach may be required on occasion).
 - An obligation to comply with all relevant legislation.
 - Provisions for dealing with data protection and confidentiality.
 - An obligation to take out and maintain adequate levels of insurance
 - Provisions dealing with how funding must be accounted for and recorded for audit purposes.
 - A clear process for resolving any disputes.
9. Local authorities should ensure every provider agreement is clear and transparent.
10. Local authorities must secure a free entitlement place for every eligible child in their area
11. The local authority should work in partnership with providers to agree how to deliver free entitlement places.

OTHER OPTIONS CONSIDERED AND REJECTED

No other options to consider.

PRE-DECISION CONSULTATION

The draft directory and funding agreement 2017 – 2020 was sent to all Early Years Provider Reference Group representatives on 13 April 2017 to respond by 5 May 2017.

One comment was received on 20 April 2017 asking why Havering is not using the 'Model Agreement - Early Years Provision free of charge and Free childcare, March 2017'.

LA response: The model agreement is exactly what has been used for the draft for Havering and the various paragraphs where the Local Authority should set out their local arrangements have been added.

The EYPRG (Early Years Provider Reference Group) meeting which took place on 9 May 2017 was well attended by EYPRG representatives and the following points were raised with regards to the draft directory and funding agreement:

- Concerns were raised about the legal input in to the Directory and Funding Agreement. The group was advised that the Model agreement identifies that LA input is required.

Representatives were advised to add the provider agreement as an agenda item at their cluster meetings

- Providers asked if the funding rate could be added into the Funding Agreement. It was discussed that should the rate change, providers would be required to resubmit following each revision to continue delivering funding. This would cause an additional burden on providers.

The group were advised that the parental declaration that is incorporated in the model agreement will be rewritten for Havering providers to use.

- At the meeting discussion around the parental agreements and finance documents and how long they should be kept for. Providers were informed that these documents should be kept for up to 6 years in the event that they are audited. They may wish to scanned and kept digitally.
- With regards to Audit, providers asked if Education Finance can put together a list of what they would require if they were to be audited.

This has now been included in the Early Education and Childcare Provider Guide.

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The LA will be working with the EYPRG representatives to identify a reasonable deposit amount and refund time frame.

Overall EYPRG representatives were happy with the version that was circulated.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Pooneeta Mahadeo

Designation: School Organisation Manager



Signature:

Date: 28/06/2017

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The Authority must secure, so far as is reasonably practicable, that the provision of childcare (whether or not by them) is sufficient to meet the requirements of parents in their area who require childcare in order to enable them—

(a) to take up, or remain in, work, or

(b) to undertake education or training which could reasonably be expected to assist them to obtain work. (section 6 Childcare Act 2006)

Under section 7 Childcare Act 2006 the Authority must ensure that free early years provision is available and have regard to any guidance from the Secretary of State.

The Secretary of State has provided guidance including a template model agreement with providers. The Guidance states that they expect all the standard headings and wording in section 2 of the Guidance to be used in all agreements with providers subject to modifications for local processes.

Legal advice has been provided which recommended a number of changes to the model agreement. However, as stated above consultees have commented that Havering should be using the model agreement. There is a justification for Authorities adhering to the wording of the model agreement to ensure consistency across Local Authority boundaries as many providers operate in more than one LA area. It is understood that this is one of the reasons why the Secretary of State published the model agreement.

The legal advice given is that the template model agreement is confusing and may present difficulties in enforcement should there be a dispute between the parties to the agreement. For instance whilst this is a grant funding arrangement it blurs the distinction between such a Grant Funding arrangement (which is not subject to procurement law) and a Contract, (which is subject to procurement law, and the Council's Contract Procedure Rules). The model agreement also reads as though it is meant to be a "multi-party agreement" instead of just an agreement between the Council and the Provider.

The proposed model agreement version complies with the Secretary of State's guidance, and therefore there is sufficient justification for adopting it in its current form. Ultimately the Council is responsible for passing on the funding from the Secretary of State to local providers and if the wording proposed is that expected by the Secretary of State then the risk of any adverse consequences is low and would be confined to any legal disputes between the parties on the performance of the proposed service, and the terms and conditions of the agreement in assisting it to enforce the service provision.

Furthermore consultation has been carried out in determining the final form of the agreement. When any consultation is undertaken by a public authority the results of the consultation must be meaningfully considered before a final decision is taken. The relevant consultation paragraph above sets out how that has been done, which appears to comply with the Council's obligations.

FINANCIAL IMPLICATIONS AND RISKS

The Local Authority has a statutory duty to secure sufficient nursery education for two, three and four year olds in a diverse range of high quality provision in order to meet parental choice. The funding agreement is designed to explain the financial arrangements for making payments to childcare providers in respect of the free places that they provide.

The funding to local authorities for the free entitlement for eligible 2, 3 and 4 year olds through the Early Years Block of the DSG is calculated on the basis of a basic hourly rate and factors for additional needs, based on measures of free school meals, English as an additional and disability living allowance claims. An area cost adjustment is applied to each of these factors to reflect variations in local costs. The funding to LAs is based on the latest January census and adjusted for the following January census to capture growth. The allocation to Havering in 2017-18 is £14,847,000 including funding for the Early Years Pupil Premium (EYPP) and the Disability Access Fund (DAF).

All providers in Havering are paid a local universal base rate of funding (i.e. no differential rates for settings of different types) which is currently £4.39 per hour plus supplements for deprivation. These rates are applied to both the universal 15 hour and the additional 15 30 hour offer for working parents. For 2 year olds the rate is £5.28 per hour. The EYPP and DAF provides an additional £302 and £615 per annum respectively to providers for eligible children.

The funding allocated to Havering providers currently ranges from £277.68 per year to a childminder with a low number of hours of childcare to £235,813 per year to a provider with the highest number of hours. Over the course of the agreement these allocations are likely to increase once the uptake of the additional 15 hours for working parents is known.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

There are no direct human resources implications arising from the any of the recommendations made in this report.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Equality Act 2010 sets out the legal obligations for local authorities to plan in advance what disabled children and young people might require and what adjustments might need to be made to prevent that disadvantage. The EIA is included as Appendix 3

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None	BACKGROUND PAPERS
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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

Proposal NOT agreed because

Details of decision maker

Signed

Name:

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Other manager title:

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Andrew Beesley, Committee Administration & Interim Member Support Manager in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____