



DERBY CITY COUNCIL

# **Provider Agreement Guidance**

Comes into effect from 1 September 2019

For childminders, private, voluntary, independent and maintained providers delivering the Funded Early Education Entitlement for two, three and four year olds

# **Contents**

**Section 1 – Background and key local authority responsibilities**

**Section 2 – Definitions**

**Section 3 – Duration of agreement and the Directory of Providers**

**Section 4 – Eligibility, grace period and charging**

**Section 5 – Business planning, flexibility compliance and the funding process**

**Section 6 – Quality, special educational needs and disability**

**Section 7 – Partnership working, social mobility and disadvantage**

**Section 8 – Indemnity**

**Section 9 – Insurance**

**Section 10 – Intellectual property rights**

**Section 11 – Confidentiality and freedom of information**

**Section 12 – Data protection and safeguarding**

**Section 13 – Termination and withdrawal of funding**

**Section 14 – Force Majeure**

**Section 15 – Notices**

**Section 16 – Dispute resolution and appeals process**

**Section 17 – Entire agreement**

**Section 18 – Assignment and sub-contracting**

**Section 19 – Statutory requirements**

**Section 20 – Bribery and corruption**

**Section 21 – Equalities Act**

**Section 22 – Third part rights**

**Section 23 – Governing law and jurisdiction**

**Section 24 – Counterparts**

## **Appendices**

Appendix 1	Early Education Single Funding Formula for 3 and 4 year old
Appendix 2	Invoicing examples
Appendix 3	Annual budget statement
Appendix 4	Attendance register
Appendix 5	Compliance audit form
Appendix 6	Derby City Council Equalities Policy
Appendix 7	Derby City Council Parental Contract

**For further information, guidance and examples of documentation on claiming the 2, 3 and 4 year old Funded Early Education Entitlement visit:**

**<http://www.derby.gov.uk/community-and-living/childcare/childcare-providers/>**

## **1. Background and key authority responsibilities**

- 1.1 The Childcare Act 2006 places specific duties on local authorities to secure sufficient early years provision free of charge for eligible 2, 3 and 4 year olds. And the Childcare Act 2016 places a duty on local authorities to secure the equivalent of 30 hours of funded childcare over 38 weeks of the year for qualifying children. The Council deliver a rolling programme of Childcare Sufficiency Assessments to underpin this duty and to assess the availability of childcare in the city.
- 1.2 The Council aims to work in partnership with providers to agree how to deliver Funded Early Education Entitlement (FEEE) and will consult with providers over delivery models and payment arrangements.
  - 1.2.1 The Provider Agreement and this guidance do not provide guidance on how providers operate their private business, including charges for provision over and above a child's funded hours. The Council will 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 funded place.
- 1.3 This guidance has been produced in light of the revised Department of Education (DfE) Statutory Guidance for Local Authorities June 2018 and the DfE Early Years Entitlement: Operational Guidance June 2018 on the delivery of Funded Early Education Entitlement (FEEE) for two, three and four year olds and will support all childcare providers understanding their responsibility and the responsibility of Derby City Council (the Council) when delivering the FEEE for 2, 3 and 4 year olds and the Extended Entitlement for eligible 3 and 4 year olds in Derby. It contains details of the processes and sets out expectations and guidance for all providers of the FEEE in the city. The guidance is cross referenced to the Provider Agreement (PA) 1st September 2018 and both documents form the contractual agreement between the Council and the Provider.
- 1.4 Providers who have completed a notification to deliver FEEE form and entered into a Provider Agreement with the Council will be listed on the 'Directory of Providers', only providers listed will be able to deliver funded places for 2, 3 and 4 year old children. Providers who are newly registered with Ofsted and are awaiting their first Ofsted inspection will be given temporary inclusion on the Directory of Providers. Provider's Ofsted inspection outcome grade will determine a Provider's ability to deliver FEEE and remain on the Directory of Providers.
  - 1.4.1 To be listed on the Directory of Providers and deliver FEEE the provider must sign and return a Provider Agreement. Failure to sign the Provider Agreement will mean that the Council will withdraw FEEE payment and your provision will no longer be eligible to be listed on the Directory of Providers.
- 1.5 The following frameworks and legislation underpin the Provider Agreement and gives guidance to Local Authorities and providers on their duties with regard to delivering 2, 3 and 4 year old funded session:
  - 1.5.1 Early Education and childcare, Statutory guidance for Local Authorities 2017
  - 1.5.2 Childcare Act 2006,
  - 1.5.3 Childcare and Families Act 2014 – Duty to Secure Early Years Provision Free of Charge
  - 1.5.4 Childcare Act 2016 – Early Years Provision Free of Charge and Extended Entitlement
  - 1.5.5 Data Protection Act 2018
  - 1.5.6 Education Act 2011
  - 1.5.7 Equality Act 2010
  - 1.5.8 School admissions code 2014

1.5.9 Special Educational Needs and Disability Code of Practice 2015

1.5.10 Statutory framework for the early years foundation stage 2014

1.5.11 The Council retains the right to unilaterally vary the Agreement to reflect changes in legislation and departmental guidance without express changes in the Provider Agreement and / or Provider Agreement Guidance.

- 1.6 The Council requires all providers of early education wishing to provide the FEEE within the City of Derby, to enter into a Provider Agreement on the terms of this Agreement and the Guidance to the Provider Agreement, to govern the provision of the FEEE and be included on the Directory of Providers. If a Provider fails to return a signed Provider Agreement by the stated return date their FEEE funding payments may be delayed or not paid.
- 1.7 All providers of FEEE must be registered with Ofsted on the Early Years Register for inclusion on the Directory of Providers. Local Authority maintained schools are exempt from registering with Ofsted but if a school is considering delivering funded places for 2 year olds they will be required to complete an age range change following the Council's formal age range change process to be included on the Directory of Providers.
- 1.8 All children who meet the prescribed criteria are able to take up a funded place to benefit their social, physical and cognitive development and outcomes and helping to prepare them for school. Evidence shows that attending high quality early education has lasting impact on social and behavioural outcomes. The entitlements make childcare more affordable for parents and enables parents to work or increase their working hours if they wish to do so.
- 1.9 The Council and the Provider agree that they share a clear vision and a joint aim that the provision of FEEE within the City of Derby should be of high quality, and both Parties believe that high quality education is most likely to be evident in those providers that embrace dialogue, challenge and partnership working.

The Council under the Guidance provided by the DfE will have regard to all of the following key principles when planning and managing the delivery of the FEEE:

### **Key principles**

- the needs and well being of the child are paramount
- the FEEE must be provided free at the point of delivery
- the Council will deliver the FEEE in a way that balances its priorities around sufficiency, quality and accessibility
- the Council will not intervene in providers private business outside of the FEEE, including charges for provision over and above the FEEE providing that this does not affect the parent's ability to take up their child's funded place.
- local authorities and providers must consult with and listen to parents about how the parents want to access their FEEE
- the FEEE will be delivered in a way that reflects parental demand as much as possible and gives parents choice about where and how they access their entitlement
- local authorities and providers will adopt an inclusive approach, promoting equality of opportunity, particularly to the most disadvantaged, looked-after children and disabled children or children with special educational needs.

- 1.10 The Council must ensure that they meet their duties under the Equality Act 2010 when securing early years places for 2, 3 and 4 year olds. The FEEE is a service commissioned by the Council who has a clear Equality and Diversity Policy. This policy and its aims will be shared with the providers of the FEEE; they will be encouraged and supported to adopt it as a shared policy, with both parties believing that high quality education and childcare is most likely to be evident in those providers that embrace dialogue, challenge and partnership working. For the Council's Equality and Diversity Policy please see appendix 6.
- 1.11 The Provider has agreed to supply and deliver FEEE, to all eligible, 2, 3 and 4 year old children as commissioned by the Council under the terms and conditions of the Provider Agreement, the Guidance to the Provider Agreement and in accordance with Statutory Guidance.
- 1.12 The Provider, by signing and returning the Provider Agreement to the Council is confirming its compliance with the Provider Agreement and this document the Guidance to the Provider Agreement.

## 2 Definitions

- 2.1 In the Provider Agreement and this associated guidance document the following definitions apply:

Business Day	means a day where the Service is open for business and delivering childcare.
Child(ren)	means a child or children eligible to receive an early learning place funded by the Council in accordance with the terms of this Agreement
Childminding Agencies	will be 'one-stop-shop' organisation which will help childminders with training, business support, advice and finding suitable parents.
Confidential Information	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either Party and all personal and sensitive data within the meaning of the Data Protection Requirements.
Data Protection Requirements	means the Data Protection Act 2018 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.
Directory of Providers	the Council's list of providers who have applied to and are able to deliver FEEE.
Eligibility Codes	means the 6 digit code issued by the Council for eligible 2 year old or the 11 digit code issued by HMRC for eligible 3 and 4 year old for the extended entitlement.
Extended Entitlement	means the extended funded early education places delivered for an additional 15 hours a week over a minimum of 38 weeks of the year for eligible 3 and 4

	year olds. Parents must reconfirm their eligibility for the extended entitlement every 3 months with HMRC
Funded Early Education Entitlement (FEEE)	means funded early education places delivered for 15 hours a week over a minimum of 38 weeks of the year for 2, 3 and 4 year olds.
Grace Period	means the period of childcare given to a family who has taken up an extended entitlement childcare place but subsequently loses eligibility.
Link Officer	means a member of the Early Years Quality Improvement team that has been nominated to work with a provider.
Ofsted	the regulator of childcare providers who are registered on the Early Years Register and/or Childcare Register which term shall include any successor body carrying out the same or similar functions.
Parent/s	means the person/persons with responsibility for the child and such terms includes parent, guardian, carer or person with whom the child normally resides.
Party	means the Provider and/or the Council.
Provider Agreement and Guidance to the Provider Agreement	these documents shall form the contract between the Council and providers able to deliver funded places for 2, 3 and 4 year old and included on the Council's Directory of Providers.
Remediation Plan	means a remediation plan also known as a Focused Improvement Plan (FIP) developed by the Council either in conjunction with the Provider or not as the case may be and issued to the Provider in accordance with clause 13.2.3.1
Service	means the service to be provided by the Provider under the terms of this Agreement, being the management and delivery of a high quality early years education to eligible 2, 3 and 4 years olds as more fully described in the Service Specification;
Setting	means the place of delivery of the service by the Provider.
Specification	the specification describing detail as to the Service to be provided by the Provider under this Agreement

### **3. Duration of Agreement and Directory of Providers**

- 3.1 The Agreement shall come into effect on 1<sup>st</sup> September 2019 and shall, subject to earlier termination in accordance with terms of this Agreement, remain in full force and effect until further notice in accordance with the terms of clause 13 ("Termination and withdrawal of funding").
- 3.2 Any Provider wishing to join the Directory of Providers must complete the notification form for delivering FEEE for 2, 3 and 4 year olds which can be found in the downloads section at <https://www.derby.gov.uk/community-and-living/childcare/childcare-providers/provider-funding-childcare-funded-places/>

Once the Childcare and Families Information Team have received a providers Notification to Deliver FEEE for 2, 3 and 4 year olds an invite will be sent to the provider to attend a FEEE Briefing Session, the provider must attend this session to be briefed on the funding process and guidance's before delivering funding.

3.2.1 Following the FEEE briefing session the provider must return a signed copy of Derby City Councils Provider Agreement and Complete the FEEE Provider Set Up Form and return with following supporting documents to be set up and added onto the Directory of Providers to deliver FEEE funding:

3.2.1.1 BACS forms – childminders

3.2.1.2 Supplier Information Request – Group Providers

3.2.1.2 Bank statement for previous month – all providers

3.2.1.3 Cash flow forecast – new group providers

3.2.1.4 Last year's accounts – group providers

3.2.1.5 Provider's Admissions and Access Policy – all providers

3.2.1.6 Provider Charging Policy – all providers

The Directory of Providers is a list of childcare providers who are in receipt of funding to deliver the FEEE. All providers on the Directory must be registered on the Early Years Register and be inspected by Ofsted unless able to evidence that they are exempt from registration. The Derby Directory of Providers includes:

- childminders
- nursery units in independent schools
- pre-school playgroups
- private day nurseries
- school nursery classes and nursery schools

Maintained nursery schools and nursery classes are only listed on the Directory of Providers if they wish to deliver the FEEE to 2 year olds. Where 2 years entitlement is being delivered, maintained schools must follow the Council's change of age range procedures.

It is the responsibility of the Council to maintain the Directory of Providers. This includes:

- providing details of providers offering FEEE places through the Families Information Service to parents or professionals working with families
- providing support and guidance to ensure providers meet their responsibilities under the Statutory Guidance and the Derby City Council Provider Agreement
- challenging and supporting providers to ensure high quality FEEE provision
- providing access to support and guidance to providers to enable them to deliver the extended FEEE where there is parental demand
- keeping providers updated on changes to legislation, guidance, procedures and processes.

3.2.1.1 The Council will not include providers on the Directory of Providers that do not actively promote British values (first set out in the Government's Prevent strategy and include democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs), or which promote views or theories as fact which are contrary to established scientific or historical evidence and explanation. Upon receipt of a complaint regarding the above the Council will consider the claim

being made and retains the right to investigate further and notify Ofsted. Where complaints are upheld the Council will withdraw all FEEE funding.

Additionally the next following sub-paragraphs in this para 3.2 are subject to sub-para 3.2.7.

3.2.2 Ofsted and where appropriate inspectorates of independent schools are the sole arbiter of quality for all early year's providers, inspection will have due regard to the early years foundation stage and the Council will consider the quality judgement issued to providers when including a provider on the Directory of Providers.

### **Delivery of Funded 2 Year Old Places**

3.3.1 Providers intending to deliver FEEE for eligible 2 year olds must hold an 'Outstanding' or 'Good' Ofsted at the most recent inspection in order to be listed on the Directory of Providers.

3.3.2 Providers who hold a 'Satisfactory/Requires Improvement' or 'Inadequate' Ofsted inspection outcome will not be able to join or stay on the Directory of Providers offering funded 2 year old places.

3.3.3 If the Ofsted inspection has identified significant breaches of the Statutory Framework for the Early Years Foundation Stage or the requirements for children's learning and development outcomes are not being met the Council retains the right to give legal notice to stop funding 2 year old places with the provider with immediate effect.

3.3.4 Providers who are already delivering FEEE for eligible 2 year olds and receive a 'Satisfactory/Requires Improvement' or 'Inadequate' Ofsted inspection outcome will only remain on the Directory of Providers to provide continuity of care to children already attending or where the Council recognises through its Market Position Statement that there are insufficient places available locally to offer families an alternative.

3.3.5 Providers who do not have an Ofsted 'Outstanding' or 'Good' will only be allowed to remain on the Directory of Providers for a time limited period specified by the Council and informed by Ofsted monitoring visits or re-inspections. Ofsted have stated that all provision judged inadequate will be monitored, and re-inspected within six months. During the monitoring process Ofsted may take further enforcement action if there is no improvement. Nurseries and pre-schools judged as requires improvement will be monitored within six months and re-inspected within 12 months. They will have two years to get to achieve a good Ofsted inspection outcome. A nursery or pre-school that has been judged as requires improvement at two consecutive inspections and is still not good at its third inspection is likely to be judged inadequate. This does not apply to childminders, childcare on domestic premises, before and after school care, holiday schemes or crèches.

3.3.6 In exceptional circumstances the Council may consider continuing to fund 2 year old places with Satisfactory/Requires Improvement' or 'Inadequate' providers if the Council can evidence that there is not sufficient accessible good or outstanding provision available locally.

### **Delivery of Funded 3 and 4 Year Old Places**

3.3.7 Providers intending to deliver FEEE for 3 and 4 year olds must hold an 'Outstanding' or 'Good' or 'Satisfactory/Requires Improvement' Ofsted inspection outcome in order to be listed on the Directory of Providers.

3.3.8 Providers who hold an 'Inadequate' Ofsted inspection outcome will not be able to join the Directory of Providers offering funded 2, 3 and 4 year olds places.

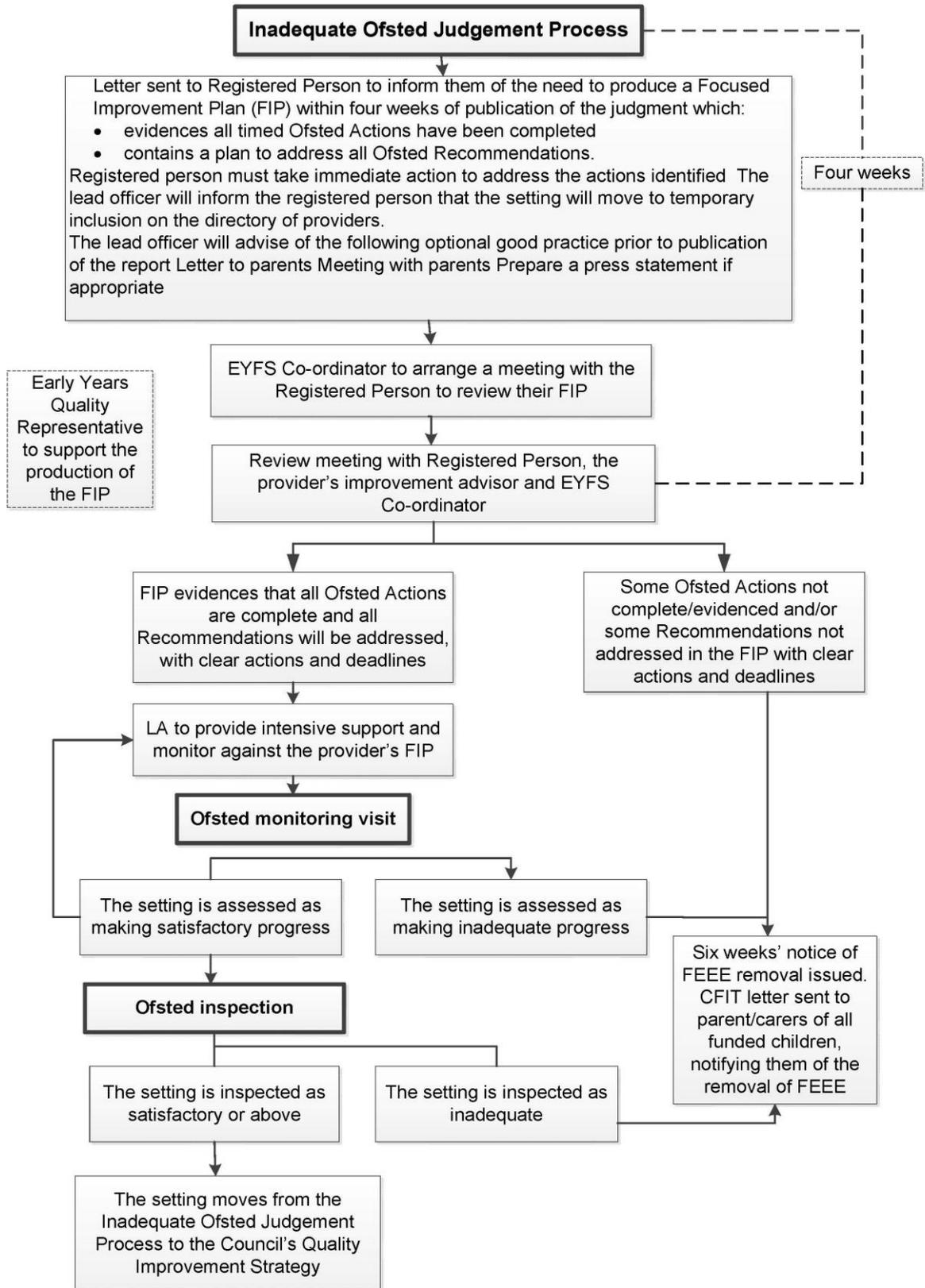
3.3.9 If the Ofsted inspection has identified significant breaches of the Statutory Framework for the Early Years Foundation Stage or the requirements for children's learning and development outcomes are not being met the Council retains the right to give legal notice to stop funding 3 and 4 year old places with the provider with immediate effect.

3.3.10 Providers who are already delivering FEEE for 3 and 4 year olds and receive an 'Inadequate' Ofsted inspection outcome will only remain on the Directory of Providers to provide continuity of care to children already attending or where the Council can evidence through its Market Position Statement that there are insufficient places available locally to offer families an alternative.

3.3.11 Providers who do not have an Ofsted 'Outstanding', 'Good' or Satisfactory / Requires Improvement' will only be allowed to remain on the Directory of Providers for a time limited period specified by the Council and informed by Ofsted's monitoring visits and re-inspections. Ofsted have stated that all provision judged as 'Inadequate' will be monitored, and re-inspected within six months. During the monitoring process Ofsted may take further enforcement action if there is no improvement. Nurseries and pre-schools judged as requires improvement will be monitored within six months and re-inspected within 12 months. They will have two years to achieve a good Ofsted inspection. A nursery or pre-school that has been judged as requires improvement at two consecutive inspections and is still not good at its third inspection is likely to be judged inadequate. This does not apply to childminders, childcare on domestic premises, before and after school care, holiday schemes or crèches.

3.3.12 In exceptional circumstances the Council may consider continuing to fund 3 and 4 year old places at 'Inadequate' Providers if the Council can evidence that there is not sufficient accessible 'Outstanding', 'Good' or 'Satisfactory'/'Requires Improvement' provision available locally.

## Inadequate Ofsted Judgement Process



### **Removal from the Directory of Providers**

If a Provider's registration is resigned or cancelled with Ofsted, they will automatically be removed from the Directory. Any unused funding will be reclaimed from the Provider or owner. Where there is a dispute over the amount of unused funding a full compliance audit will be undertaken to resolve the issue.

A suspension of registration from Ofsted will result in immediate temporary removal from the Directory until it is resolved with Ofsted. Unused funding will be reclaimed from the provider or owner.

If a Provider does not wish to remain on the Directory and does not want to offer the FEEE to families, they should:

- notify the Council in writing giving the reason for this decision
- give at least one full term's notice
- inform families in writing of their decision to withdraw, giving at least one full terms notice (unless prior consent is obtained from the local authority). The letter must also include details of the Families Information Service, so parents can seek support from this service to secure alternative provision offering the FEEE if it is required.

The Council will take immediate action to de-validate when an allegation is made to the Council that a Provider has failed to meet any of the requirements of the Provider Agreement. This could result in de-validation and removal from the Directory. Please see 3.2.10 for information on the appeals process regarding de-validation.

The Council will remove providers from the Directory if the Provider:

- fails to comply with the requirements of the Statutory Guidance on the delivery of the FEEE for 2, 3 and 4 year olds

Or

- fails to meet the requirements stated in the Provider Agreement

If the Council becomes aware that the Provider is failing to meet any of the terms and conditions of the Provider Agreement, then the Council will write to the Provider stating the breach and setting a specified time scale for the breach to be resolved.

If the Provider does not rectify the breach or breaches within the specified time scale and notify the Council in writing of the outcome the Provider will be removed from the Directory and will receive a Notification of Removal from the Council. The Notification of Removal will be issued by the Council within 14 days of the Provider's failure to rectify the breach within the specified time scale and thereafter the FEEE funding will be withdrawn. Unused funding will be reclaimed from the provision or owner. Where there is a dispute over the amount of unused funding a full compliance audit will be undertaken to resolve the issue.

Where the Provider is removed from the Directory the Council will then work in partnership with the Provider to inform parents and the Families Information Service will support families to find alternative childcare.

A Provider who has been removed from the Directory may be re-admitted if the grounds for removal are no longer applicable and the Provider is otherwise eligible under the usual notification process. It is the Provider's responsibility to contact the Council and demonstrate that the initial breach has been rectified and maintained for a minimum of one full term.

The Provider is able to appeal against a decision to reject or remove their childcare service from the Directory of Providers. To do this they should use the procedure set out below once they have received formal notice to decline or remove their childcare service from entry onto the Directory of Providers:

- write to Peoples Services Directorates Departmental Management team , within 28 days of receiving the Notice, stating why they disagree with the decision and including any mitigating evidence
- the Peoples Services Directorates Departmental Management team will convene a meeting of relevant members to review the appeal. This may include Early Years Consultants, Quality and Inclusion Team Managers, Childcare and Families Information Team Managers
- the complainant will be notified in writing of the date of the review meeting and may be invited to attend. The complainant may attend with one friend/colleague to support them
- all supporting evidence will be reviewed this will include the complainant's letter and mitigating evidence. At the end of the meeting all actions will be agreed and a final decision made
- the complainant will be notified in writing of the outcome within 14 days of the review meeting.

Further information on the Devalidation Process can be found in section 13 of this document.

A copy of the Provider Agreement should be kept for ongoing reference. A blank copy can be found in the downloads section at:

<https://www.derby.gov.uk/community-and-living/childcare/childcare-providers/provider-funding-childcare-funded-places/>

- 3.4 Childminders who are registered with a Childminding Agency will only be able to be listed on the Directory of Providers and deliver funded 2 year old places if the Agency has achieved an Ofsted grading of 'Outstanding' or 'Good' and for 3 and 4 year old funded places they will only be able to be listed if their Agency has achieved an Ofsted grading of 'Outstanding', 'Good' or 'Requires Improvement'. The Council will where childminders are registered with a childminding agency fund the individual childminder directly.

3.4.1 The Council will not fund childminders registered with a Childminder Agency where the agency has indicated to the local authority that the childminder is not of satisfactory quality unless it is necessary to do so to ensure sufficiency of accessible places.

- 3.5 Providers delivering FEEE must immediately inform their Link Officer in the EYQI Team when they are being inspected by Ofsted and invite their Link Officer or a member of the EYQI Team to attend the Ofsted feedback session. Failure to do so will prevent the Council having first hand feedback on the inspection findings and key recommendations and will thus effect and delay the support given to Providers. Representation by the Council at the Ofsted feedback session will help the Council make a more informed decision on the Council's ability to continue to fund FEEE places if the Ofsted inspection outcome differs from those detailed in 3.3.1 and 3.3.7.

- 3.6 The Council will maintain a Directory of Providers who are entitled to deliver FEEE to 2, 3 and 4 year olds. The Provider shall work in partnership with the Council and be able to demonstrate that they are a sustainable business in order to be listed on the Directory of Providers.

To demonstrate sustainability group providers, such as pre-school playgroups and day nurseries, when completing the Notification to Deliver 2, 3 and 4 Year Old Funded Places form will need to submit a realistic two year cash flow forecast detailing projected occupancy levels and income and expenditure information. The information submitted will need to evidence that the provider is able to remain sustainable for a period greater than 2 years to ensure continuity of care for all funded children.

- 3.7 If the provider fails to meet all data requirements requested by the Council as outlined in this Guidance, the Council reserves the right to remove the provider from the Directory of Providers as soon as is reasonably practical.

To continue to be listed on the Directory of Providers, the provider must notify the Council immediately if there is a change:

- in ownership, premises, nursery manager or management structure
- of treasurer, chairperson, secretary or registered person
- of name but not the Unique Reference Number allocated by the DFE
- of bank details
- of telephone number
- of email address for the provider
- of correspondence address
- to their Admissions and Access Policy
- to their Charging Policy
- to their FEEE modelling and delivery

To ensure continuity can be offered to families, the provider should notify the Council if there is a variation in number of places available and delivery model

Data requirements are outlined in section 5 of this guidance in the FEEE Funding Timetable for the Academic Year and published on line in the downloads section at: <https://www.derby.gov.uk/community-and-living/childcare/childcare-providers/provider-funding-childcare-funded-places/>

## 4. Eligibility, grace period and charging

- 4.1 The Provider must be located and delivering the FEEE places within Derby City
- 4.2 The Provider shall deliver high quality early years provision to children throughout the Contract Period in accordance with the terms of the Agreement and this Guidance and specifically meeting the conditions within **Section A1: Eligibility** of the Statutory Guidance 2018 so that all eligible children that wish to attend the Setting are able to take up high-quality early education and childcare regardless of their parent's ability to pay.

4.3 The Provider should deliver the FEEE entitlement consistently to all parents, whether in receipt of the universal or extended entitlement and regardless of whether they opt to pay for optional services or consumables. The Provider should clearly communicate to parents details about the days and times that they offer FEEE places, along with their service charges. Those children accessing the FEEE should receive the same quality and access to provision as other children not accessing the FEEE.

4.3.1 If the Provider is not able to offer fully flexible places it should work with parents to ensure that as far as possible the patterns of hours are convenient for parents' working hours.

4.4 The Provider must check original documentation to confirm a child is eligible for and has reached the eligibility age at the point of initial registration for all FEEE places. If the Provider delivers a place to a child where eligibility has not been fully checked by the Provider the Council shall not provide any funding in respect of that child.

4.4.1 Parents must apply for their 2 year old eligibility code directly from the Families Information Service either on their web site <https://www.derby.gov.uk/community-and-living/childcare/early-learning/> or by calling 01332 640758

4.4.2 Parents must apply for their 3 and 4 year old extended entitlement code directly from HMRC either on their web site [www.childcarechoices.gov.uk](http://www.childcarechoices.gov.uk) or by call their helpline on 0300 123 40 97. There is no obligation or expectation on the Council to secure the extended entitlement hours where a parent has applied or reconfirmed their code after the 31<sup>st</sup> August, 31<sup>st</sup> December or 31<sup>st</sup> March deadline date. The table below shows the deadline by which parents must apply for or reconfirm their eligibility for an extended entitlement place by:

Code Application / Reconfirmation Deadline	They are eligible:
31 March	To take up a place during the Summer term starting in April.
31 August	To take up a place during the Autumn term starting in September.
31 December	To take up a place during the Spring term starting in January.

4.4.3 From September 2018, children in foster care will also be eligible for the extended entitlement, providing:

- the child has attained the age of three,
- that the additional childcare is consistent with the child's care plan, and
- the foster parent is taking up paid employment outside the fostering role.

4.4.3.1 Foster parents should check their eligibility for the extended entitlement by applying to the responsible local authority.

4.5 The Provider should offer places to eligible 2 year olds on the understanding that the child remains eligible until they become eligible for the universal entitlement for 3 and 4 year olds.

4.6 Children aged 2 years that meet the defined eligibility criteria are entitled to access up to 15 hours of FEEE over no fewer than 38 weeks of the year. Providers must

make sure that parents understand that the free entitlement cannot be compressed to fewer weeks per year. The FEEE totals 570 hours over a maximum of three terms before children move on to the 3 and 4 year old entitlement. The table below details when children may begin and finish using their place.

<b>If the child's 2<sup>nd</sup> birthday falls between</b>	<b>They are eligible for a funded place from:</b>	<b>Their funded place ends...</b>
1 January and 31 March	Start of the summer term following their 2 <sup>nd</sup> birthday	At the end of the spring school term when the child becomes entitled to receive 3 and 4 year old funding.
1 April and 31 August	Start of the autumn term following their 2 <sup>nd</sup> birthday	At the end of the summer school term when the child becomes entitled to receive 3 and 4 year old funding.
1 September and 31 December	Start of the spring term following their 2 <sup>nd</sup> birthday	At the end of the autumn school term when the child becomes entitled to receive 3 and 4 year old funding.

All 3 and 4 year old entitled to access the universal offer of up to 15 hours of FEEE over no fewer than 38 weeks of the year. Providers must make sure that parents understand that the free entitlement cannot be compressed to fewer weeks per year. The FEEE totals 570 hours over a maximum of three terms per academic year for up to two years before they reach compulsory school age. Compulsory school age is defined in Section 8 of the Education Act 1996 as the beginning of the term following a child's fifth birthday. Where 3 and 4 year olds are eligible for the extended entitlement they can take an additional 15 hours per week over no fewer than 38 week of the year. The universal and extended entitlement together totals 1140 hours over a maximum of three terms per academic year for up to two years before they reach compulsory school age. Compulsory school age is defined in Section 8 of the Education Act 1996 as the beginning of the term following a child's fifth birthday. The table below details when children may begin and finish using their place.

<b>If the child's 3<sup>rd</sup> birthday falls between:</b>	<b>They are entitled for a funded place from:</b>	<b>Their funded place ends...</b>
1 January and 31 March	Start of the summer term following their 3 <sup>rd</sup> birthday	At the end of the spring school term as the child turns 5
1 April and 31 August	Start of the autumn term following their 3 <sup>rd</sup> birthday	At the end of the summer school term as the child turns 5
1 September and 31 December	Start of the spring term following their 3 <sup>rd</sup> birthday	At the end of the autumn school term as the child turns 5

The delivery of the FEEE by individual providers will be dependent on a provider's capacity and available vacancies. Parents may choose for their child to take fewer than their full entitlement each week.

The minimum FEEE that the Provider must make available to every eligible child is 570 hours over no fewer than 38 weeks up to a maximum of 52 weeks a year or 1140 hours over no fewer than 38 weeks up to a maximum of 52 weeks for 3 and 4 year olds who are eligible for the extended entitlement. Where the Provider is not available to deliver a child's full entitlement or parents' wish to split the funded hours across multiple providers, the Provider must ensure that maximum funded hours are not exceeded and that effective transitional and partnership working arrangements are in place to meet the care needs of the child.

The term time funding is given over 38 weeks per academic year. The Provider will only be funded for the number of FEEE weeks that they deliver, in some cases where a Provider does not deliver the full 38 weeks of FEEE the funding will be restricted to the number of weeks they do deliver in each term. The number of funded weeks in the year and the maximum number of funded weeks available in each term will be notified to all providers in the FEEE Funding Timetable before the start of the academic year (September). See 5.1.3 for further information on the FEEE Funding Timetable.

The Provider must discuss with the Council and get it in written permission if they cannot offer the number of funded weeks in one term but can offer extra weeks in the following term.

Children in maintained schools attend for 38 weeks. Providers in the private, independent or voluntary sector and childminders may choose to deliver over 39 weeks but will only receive 38 weeks of FEEE funding. They could:

- charge parents for the additional week
- offer the additional week for free
- close for 5 days over the year for staff training similar to school inset days.

Either one of the options above must be clearly communicated to the parent when the child takes up their funded place and again prior to the start of each term.

Where the Provider operates shorter term times, this must be agreed with the Council who will provide written agreement for this and confirm the actual number of weeks of funding to be paid each term to the Provider.

The Provider may agree an alternative flexible model with the Council if the provider can demonstrate the model is to meet reasonable parental demand and encourages local take up of the FEEE and complies with 4.3. The Council's decision will be based upon the best interests of the child.

There may be occasions where parents' requirements cannot be met. If the Provider is unable to meet an individual parent's needs it is important that they signpost the parent to the Families Information Service. The Families Information Service will then support the parent through their Brokerage Service to explore childcare options and where possible find suitable childcare for the family.

The EYFS (Exemptions from Learning and Development Requirements) Regulations 2012 allows the Secretary of State for Education to grant exemptions to providers, in certain circumstances, from all or elements of the learning and development requirements which are set out in the EYFS and that it also enables early years Providers to exempt individual children from all or part of the learning and development requirements in certain circumstances.

The law does not allow exemptions to be granted from any of the welfare requirements of the EYFS as this deal with fundamental issues of child safety.

The Provider must ensure that they inform the Council if they have been granted exemptions/modification for children attending their setting. The Council has the discretion on whether to fund providers for the FEEE where there is an exemption in place.

4.7 The Government funding is intended to cover the cost to deliver 15 or 30 hours per week of funded, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional services. Providers are able to charge for these additional hours and services. Parents can therefore expect to pay for these, although the charges must be voluntary for the parent.

Where parents choose to purchase additional hours of provision, consumables or services the Provider must share their own transparent policy on how to respond where parents are unwilling or unable to pay for meals and consumables with options including waiving or reducing the cost or allowing parents to provide their own consumables / meals. Providers must be mindful of the impact additional charges have on the most disadvantaged parents and children.

If parents choose to purchase additional hours with the same provider where their child accesses their FEEE, the rate which can be charged for privately funded hours is a matter between the Provider and the parent and is not dictated by the Council. However, it is expected in these instances parents will be provided with an invoice or bill clearly identifying the non funded childcare, funded childcare and its associated cost. See appendix 2 for an example of good invoicing practice.

The Provider will provide parents with clear invoices and receipts where the FEEE is not set out as a monetary value and additional costs are clearly stated. Any additional costs should be detailed in a written contract with parents and agreed with the parent prior to the FEEE place being taken up. The Provider must not use additional costs as a condition of a child accessing a FEEE place.

If the FEEE session includes a meal time, the provider may make a reasonable charge to parents for the meal. The cost of the meal should not be a condition of taking up the place and parents must be given options which could include the child bringing a packed lunch where the meal offered is not suitable for the child due to special dietary needs or the parents preferring a lower cost option.

Parents' invoices should be set out clearly so parents can easily recognise and understand the funded entitlement and any fees relating to consumables, additional services or hours. The funded entitlement should not be represented to parents as being of monetary value. See appendix 2 for an example of good invoicing practice.

There is no requirement to produce an invoice for parents who only access the funded entitlement and take no additional hours or services such as lunch / tea.

Where parents take up additional hours or services an invoice must be produced. See appendix 2 for an example of good invoicing practice.

- 4.8 The Provider can charge parents who are taking a FEEE 3 and 4 year old place a deposit, payable in advance, to secure their child's FEEE place but should refund the deposit in full to parents within a reasonable time scale. The Council considers that any deposit paid by the parent should be fully refunded by the Provider to the parent within one month of the child taking up their FEEE place.
- 4.8.1 The Provider must not charge parents who are taking a FEEE 2 year old childcare place as these families are among the 40% most disadvantaged families and would act as a barrier to access.
- 4.9 The Provider cannot charge parents top up fees, for example the difference between the Provider's normal hourly rate and the funding hourly rate they receive from the Council to deliver the FEEE or require parents to pay a registration fee as a condition of taking up their child's FEEE place.
- 4.10 The Provider must ensure all parents sign the Parental Contract provided by the Council and retain copies of this document for 6 years. Parental Contracts must be kept readily available and will be reviewed as part of the Compliance Audit. The Provider may wish to have a separate agreement with parents for any additional hours or activities, which clearly sets out for how long the parent has opted to pay the additional charges and the circumstances when parents can opt out of paying the additional charges.
- 4.10.1 Alongside having sight of the 3 and 4 year olds extended entitlement eligibility code, the Provider must acquire written consent from, or on behalf of, the parents to be able to receive confirmation and future notification from the Council of the validity of the parent's extended entitlement code. The Provider should use the Parental Contract to gain this consent.
- 4.10.2 Once the Provider has received written consent from the parent, they should verify the extended entitlement eligibility code with the Council via the on-line Provider Portal.
- 4.10.3 The Council will provide via the on-line Provider Portal a swift and efficient instant checking service which confirms the validity of extended entitlement codes.
- 4.10.4 The Council will complete audit checks to review the validity of eligibility codes for children who qualify for the extended entitlement at 6 fixed points in the year.
- 4.10.5 The Council will be responsible for notifying the Provider where a parent has fallen out of eligibility and will inform the provider of the 'grace period' end date.
- 4.11 Grace period for the 3 and 4 year old extended entitlement:  
The Council will complete audit checks to review the validity of eligibility codes for children who qualify for the extended entitlement 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 listed in the table below.  
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.
- 4.11.1 The 'grace period' enables parents to retain their childcare place for a short period if they are no longer eligible for 30 hours. A child will enter the 'grace period' when the child's parents cease to meet the eligibility criteria.  
The table below gives details of the audit and grace period dates:

<b>Date Parent receives ineligible decision on reconfirmation:</b>	<b>LA audit date:</b>	<b>Grace Period End date:</b>
1 Jan – 10 Feb	11 February	31 March
11 Feb – 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 – 31 December	1 January	31 March

4.11.2 The Council will notify the Provider when a child has entered their 'grace period' and the 'grace period' end date. If a child's eligibility for the extended entitlement changes and they enter a 'grace period' then the Council will update the Provider Portal and the 'grace period' end date end date will be automatically applied to the child's eligibility code.

4.11.3 The Council will continue to fund a place for a child who has entered their 'grace period' as set out in the Early Education and Childcare Statutory Guidance for local authorities June 2018, until the 'grace period' end date has been reached.

4.11.4 The Council will not fund children who start a new extended entitlement place during the grace period. This includes the following scenarios:

- where a parent falls into their grace period before the child has started an extended hours place,
- where a parent falls into their grace period whilst their child is in an extended entitlement place, and the parent seeks to move the child to a different provider.

4.12 The Provider may admit children on a staggered basis for no more than a 2 week period.

If children are admitted on a staggered basis providers must ensure children have access to their full entitlement. The Council's expectation is that a staggered start will be spread over no more than the first 2 weeks usually at the start of each term and that at the end of this period; all children will receive their full entitlement. If this is not possible the Provider must make parents aware in writing and obtain their written consent to this compromised offer. The Provider must tell the Council in writing that they will be delivering a compromised offer so that their FEEE funding can be adjusted accordingly.

In cases where parents/carers agree to a staggered intake, but would be financially disadvantaged by having to pay for childcare, the provider must reimburse the parent for those childcare costs.

If parental consent to a staggered intake is unable to be evidenced, providers may be required to repay to the local authority the funding paid for "lost" hours or credit the parent with an equivalent number of hours over the term to ensure that they have received their full entitlement.

4.13 The Council shall not reclaim the cost of FEEE hours lost to any staggered intake during the first 2 weeks of each term as long as the staggered intake does not exceed the Council's expectations as detailed in 4.12.

## 5. Business planning, flexibility, compliance and the funding process

- 5.1 The Council shall fund all sectors in line with **Section A2: Flexibility** of the Statutory Guidance to ensure that children are able to take up their full entitlement to FEEE at times that best support their learning and development and at times which fit with parents' needs.
- 5.2 The Council expects the Provider to share information about when and how they offer FEEE places, this information will support the Council to assess the childcare market and secure sufficient stretched and flexible places to meet parental demand in the City. The Provider should also make information about their FEEE offer and admissions criteria freely available to parents before the child takes up a place or at the latest at the point the child first starts attending their setting.
- 5.3 The Council shall only fund FEEE, where the Provider delivers it in line with the Provider Agreement and associated guidance.

### FEEE Funding Timetable Academic Year: 2, 3 and 4 Year Old Funding

Term	Autumn	Spring	Summer
<b>Number of Weeks in Term</b>	This gives a breakdown of the total number of term time weeks in each term for the academic year		
<b>Number of Funded weeks</b>	This is the number of weeks within a term the Council will provide funding for. Please be mindful that as the Council only fund for 38 weeks of the year there may be a shortfall of funding within some terms based on the term dates set below.		
<b>Maximum Number of Funded Hours for term universal offer 15 hours per week</b>	This is the maximum number of funded hours that can be claimed for within each term if the child is taking universal hours only.		
<b>Maximum number of Funded Hours for term Extended Offer 30 Hours Per Week</b>	This is the maximum number of funded hours that can be claimed for within each term if child is eligible for extended hours		
<b>Term Dates</b>	These are the term dates for each term the funding can be taken between.		
<b>Qualifying age range for: 2 year olds 3 year olds 4 year olds</b>	These are the eligible dates of birth ranges for each age group.		

<b>Headcount Week</b>	All children submitted on your FEEE Online submission via the provider portal should be on your registers to attend in the week stated here for each term.
<b>Provider submits 'ESTIMATE' hours for 2, 3 &amp; 4 year olds on the online portal by:</b>	These are the deadline dates each term providers must submit their estimated hours to the Council by, via the online provider portal in order for providers 70% payment to be calculated. Any providers that fail to submit by the deadline dates set here will not receive a 70% upfront payment and will have to wait until the balancing payment date to receive 100% payment.
<b>70% Estimate Payment for 2, 3 &amp; 4 Year olds credited to providers on:</b>	These are the dates each term providers will receive their 70% payment for 2, 3 and 4 year olds.
<b>Provider submits 'ACTUAL' child data for 2, 3 &amp; 4 year olds including EYPP on the online portal by:</b>	These are the deadline dates each term providers must submit their 'Actual' child data and hours to the Council by, via the online provider portal in order for a provider's 30% balancing payment to be calculated for the term. Any providers that fail to submit by the deadline dates set here will not receive a balancing payment and any estimate funding payments made for the term will be re-claimed.
<b>30% Balancing payment for 2, 3 &amp; 4 year olds including EYPP credited to providers on:</b>	These are the dates each term when providers will receive their 30% payment for 2, 3 and 4 year olds.
<b>Provider submits 'ADJUSTMENTS' / additional funding for 2, 3 &amp; 4 year olds including DAF claims on the online portal by:</b>	These are the final dates any adjustments for new children starting or leaving after headcount week can be submitted on the synergy online portal. And it is the final date for any DAF claims for 3&4 year old funded children to be submitted on the synergy online portal.
<b>Adjustments for 2, 3 &amp; 4 year olds and DAF credited to providers on:</b>	These are the dates each term providers will receive payment for any adjustments and DAF claims submitted. Any negative values will be reduced from providers next funding payment due.

The Provider should be clear that FEEE is for eligible 2, 3 and 4 year olds only. Provision should be in line with delivery of the EYFS learning and development and welfare requirements (including minimum staffing ratio), and is not intended to cover costs of any additional services the provider may wish to offer nor can it subsidise provision for younger children.

It is the responsibility of the Provider to plan for long term sustainability by ensuring that business planning and charging policies take into account the differential costs of delivering care to different age groups.

The Council will report annually on the sufficiency of FEEE places for 2, 3 and 4 year olds in Derby, when asked the Provider must submit accurate data on occupancy levels, charging policies, admissions policy and FEEE models. Failure to submit this will result in the FEEE payment being forfeited.

Census data will be incorporated with headcount data and collected via the Provider Portal. All providers must complete and return census data with their headcount returns by the date stipulated annually in the Spring term. This data is used for the annual census submitted to DFE.

Before admitting any child to a funded place, the Provider must ensure that a parental contract is completed by the parent/guardian/carer of every child claiming the funding.

- The Provider can ask the parent to sign for up to three terms. If the parent anticipates that their child will be attending the provision for the whole academic year stated on the form i.e starting autumn term and staying at the provision until the end of the summer term. However even if three terms are signed up for the Provider must ensure that parents understand that they can still change provider at the start of any term if they wish to and this adjustment can be recorded at the time of headcount.. This is not applicable to those parents accessing the FEE on a stretched basis where a 12 month contract must be taken. The parent must comply with any notice periods incorporated in contracts they have signed with the provider.
- All completed parent/guardian/carer contracts should be retained by the Provider.
- The Provider will only need to get parent/guardian/carer to complete another parent/guardian contract form if there are any amendments to any of the child's details, funded hours and or how they are accessing the entitlement. If a parent has signed for three terms and there are no amendments to the child's details there is no need to complete the form again.
- Parent/guardian/carer contract forms must be retained by the provider for six years.
- A new parent/guardian contract form will need to be completed for each child that you are claiming for in the Autumn term as this is the start of the new academic year.
- The Council will request to see the signed parental contracts during the compliance audit, failure to produce them at any time will result in the funding being withheld or recovered.
- The Council strongly advises the Provider to check there is a parent/guardian/carer contract form in place for all children included on your headcount submission. Where forms are missing the child will be removed from the claim which cannot be amended at a later date.
- The Provider must ensure that parent/guardian/carer contract records explicit consent from the parents for Early Years Pupil Premium and Extended Entitlement eligibility checks to be made and audited by the Council.
- The Provider must ensure that they check proof of child's date of birth and sign the parent/guardian/carer contract to state that proof of birth and identity have been checked. Proof of birth and identity can be verified by the provider seeing the child's birth certificate and / or the child's passport. The Provider must record on the parent/guardian/carer contract the issue number of the birth certificate or passport that they have sight of. If these documents are not available the provider must contact Childcare and Families Information Team (CFIT).

The Provider must inform the Council via the Provider Portal when a funded child leaves. An adjustment claim must be submitted on the online portal as soon as a child leaves so that the Council can adjust and re-allocate funding for the child. If adjustments for a child leaving cannot be reduced from an adjustment payment due the negative value will be reduced from your next funding payment due.

The Council expects providers to submit headcount data via the Provider Portal. Providers will know when data needs to be submitted from the annual timetable that they will receive prior to each academic year. It will be the responsibility of the Provider to submit data within the publicised timescales, failure to do so will put your FEEE payment at risk.

- 5.4 The Council encourages the Provider to deliver flexible packages of FEEE hours within the parameters set out in the statutory guidance, these are:
- 5.3.1 no session to be longer than 10 hours;
  - 5.3.2 no minimum session length;
  - 5.3.3 not before 6.00am or after 8.00pm;
  - 5.3.4 a maximum of two sites in a single day;
  - 5.3.5 meet the quality requirements as set out in regulations and in the Statutory Guidance;
  - 5.3.6 no artificial breaks, FEEE should be offered in continuous blocks and the Providers should avoid artificial breaks being created throughout the day, for example over the lunch period.
- 5.5 FEEE cannot be claimed by, or spent on, childminders providing childcare for their own children, even if they are claiming for other children. Early Years provision is defined in section 20 of the Childcare Act 2006. This definition of childcare specifically excludes care provided for a child by a parent or step-parent (or other relative).
- 5.6 The Provider shall return accurate child data and annual charges information as stipulated by the Council each term by the specified date. Failure to do so may result in FEEE funding not being made for that term. Please note payments will only be made where the Provider has correctly completed and returned their data in line with the funding timetable. The Council will not pay any incorrectly completed claims or claims received after the agreed deadline. The Council encourages providers to submit their on-line headcount data before the agreed deadline so that any queries over duplicate funding etc can be fully investigated. The Provider can amend submitted claims before the deadline if the need arises.

The funding timetable is updated annually in September to follow the academic year and distributed to all providers. The deadlines for returning all headcount data will be stated in the FEEE Funding Timetable. An example of the FEEE funding timetable can be found at:

<https://www.derby.gov.uk/community-and-living/childcare/childcare-providers/provider-funding-childcare-funded-places/>

Interim payments are made based on the annual budget statement calculations, unless PVI providers submit an estimate number of hours closer to each term by the estimate deadline given on the funding timetable. A payment will be made at 70% of

the terms estimate by the Council at the start of each term and the remaining 30% will be paid by the 30% payment date given on the funding timetable and will include any additional funding for weightings payable under the Early Years Funding Formula as detailed in the budget summary that can be accessed on line at:

- [https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/schools/budgets2012-13/Final\\_Budget\\_Guidance\\_2019\\_20.pdf](https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/schools/budgets2012-13/Final_Budget_Guidance_2019_20.pdf)
- <https://www.derby.gov.uk/education-and-learning/schools-and-colleges/schools-financial-information/>

The amount paid under the 30% payment will be adjusted in line with actual child information received by the headcount deadline. Interim payments are made at specified dates and the Council can not deviate from this payment timetable.

Any Provider who has not submitted their completed headcount data by the required dates will forfeit their FEEE funding for the term and any payment made based on initial estimates will be reclaimed.

The Council will carry forward with zero hours the children who still meet the age range criteria for 2, 3 and 4 year old funded places. The Provider is responsible for and must review all carried forward children to ensure their headcount is accurate and shows all children that attend and the hours of FEEE funding that they are claiming funding for. As the children are carried forward with zero hours the Provider must record each child's funding hours termly to confirm their headcount claim. Children submitted on headcount with nil hours will be deleted off the Provider's headcount by the Council.

It is very important that the correct postcodes and house numbers information is obtained for all children for whom a funded place is being claimed to enable the Council to cross-reference all claims to prevent double funding. Failure to provide these details will delay payments of the funding and could prevent payment for the individual children in question. It is the responsibility of the Provider to ensure the funding is only claimed for eligible children.

The Provider must ensure that all children who have left their setting have been removed from the headcount data. It is important that the Provider deletes children correctly each term **particularly in the autumn term** when high levels of children leave to go to school. Each term the responsible person must submit a signatory form with headcount information to confirm they have checked validity of headcount forms submitted. By submitting the signatory form the responsible person is confirming that the claim is correct and there are no fraudulent records and they are acknowledging that any over payment of FEEE will be recouped immediately by the Council.

Each term the Provider will be able to complete and submit their headcount via the Provider Portal. For instructions and guidance on completing the claims process via the Provider Portal please visit:

<https://www.derby.gov.uk/community-and-living/childcare/childcare-providers/provider-funding-childcare-funded->

5.6.1 Where a child is receiving their FEEE from multiple providers the Provider must use the Parental Contract, with parents, to confirm who the main provider is and list all providers involved in the child's care. An example of the Council Parental Contract can be found at;

<https://www.derby.gov.uk/community-and-living/childcare/childcare-providers/provider-funding-childcare-funded-places/>

If the Council identifies any instances of duplicate funding it will contact all providers, seek sight of the Parental Contracts and award funding in accordance with the Parental Contract.

5.7 The Provider must return via the census e-form in the FORMS section of the Provider Portal accurate Early Years census data as stipulated by the Council annually by the specified date. Failure to do so may result in FEEE funding payments being delayed or not being paid.

5.8 The Provider may 'stretch' the FEEE of 570 hours over a minimum of 38 weeks and up to a maximum of 52 weeks where parental demand has identified a need. A 'stretched' offer will reduce the number of funded hours per week delivered by the Provider.

5.8.1 The Provider may 'stretch' the FEEE for children who qualify for the 3 and 4 year old extended entitlement of 1140 hour over a minimum of 38 weeks and up to a maximum of 52 weeks where parental demand has identified a need. A 'stretched' offer will reduce the number of hours per week delivered by the Provider. The Provider however will only be able to claim the maximum number of hour per term that are stated on the FEEE Funding Timetable even when the total 1140 hours per year have not been exceeded.

5.9 In Autumn 2018 the Council consulted with Providers regarding monthly FEEE payments and on implementing monthly FEEE payment to all Providers, particularly childminders, a clear majority of Providers opted to retain the current method of payment. The Council will be mindful of the concerns of smaller Providers, particularly childminders about their cash flow when making future decisions about payment methods and will regularly review how it pays Providers to ensure that it continues to meet the needs of Providers in the city.

5.10 The Provider must inform the Council when requested of their estimated hours for the next full financial year so that an indicative budget can be issued to comply with the Statutory Guidance.

5.10.1 The Council will request estimated projected weekly child hours on expected termly head counts in November for the next financial year (April – March) from all providers. Failure to provide projected data will result in payments being delayed or not being made. The Council will use the projected weekly child hours data for each term to generate the provider's annual budget statement which will be distributed to the Provider in February of each year. It provides a breakdown of the funding that the Council anticipates the Provider will receive for the financial year based on the Provider's estimated projected weekly child hours. The Provider should review their annual budget statement to check the estimated/anticipated number of children are realistic and reflect the number of children the Provider has included within their business plan. The Provider should contact the finance department or CFIT if there is a significant variance which may affect their sustainability. Appendix 4 illustrates the annual budget statement. Individual budget statements can be found at:

<https://www.derby.gov.uk/education-and-learning/schools-and-colleges/schools-financial-information/>

To compare your actual forecasted hours with the annual budget figure the Provider should:

- divide the amount of funding by the number of weeks in the term (where a provider offers less than 38 weeks adjustments to the number of weeks offered must be made)
- divide this figure by 15 hours in a week to give an approximate number of funded children (this calculation assumes that all children will take 15 hours)
- compare this figure to the anticipated intake/register of children
- report any significant variances to the finance department.

The Provider will be funded a base rate for 2 year olds and receive funding for the 3 and 4 year old entitlement in accordance with the Council's single funding formula. Where extra weightings have been allocated the Provider must be able to evidence how this has been spent improving outcomes for individual children. Further information on the Single Funding Formula can be found in appendix 1 of this document.

5.10.2 The Provider must also submit termly estimated hours inline with the published funding timetable, failure to submit estimated hours will result in the up-front 70% payments being delayed or not being made.

5.10.3 The Provider must complete an adjustment on the synergy online portal for any eligible 2, 3 and 4 year old children who start or leave their setting after headcount and for whom they wish to claim FEEE. Adjustments must be submitted in line with the funding timetable and before the stated term's cut-off date.

5.11 The Council shall fund the Provider as follows:

5.11.1 A fixed hourly rate for 2 year olds; and

5.11.2 In accordance with the Council's Early Years Funding formula for the 3 and 4 year old universal and extended entitlement.

5.11.3 The Council will pay providers the Early Years Pupil Premium (EYPP) in respect of disadvantaged 3 and 4 year old children who are attending their setting for the universal 3 and 4 year old offer and who meet the eligibility criteria for EYPP. Parents must confirm on the Parental Contract which provider they wish the EYPP to be paid to where multiple providers are being used. The Provider must submit parental details via the Provider Portal with headcount information and evidence that parental consent had been obtained before CFIT can check EYPP eligibility and make any EYPP payments.

5.11.4 The Council will pay the Disability Access Funding (DAF) to the Provider who has been nominated as the main provider, by the parents, on the Parental Contract where the Provider can evidence that the child is eligible. The eligibility criteria for DAF is that the child is in receipt of Disability Living Allowance (DLA) and the Provider will be responsible for checking this and submitting supporting evidence by attaching documentation to the child's headcount data on the Provider Portal. Only one DAF claim can be submitted per child and the payment will cover a 12 month period.

5.11.5 Where additional funding as part of the Early Years Funding Formula for individual children has been provided by the Council, the Provider will when requested, provide evidence to demonstrate how this has been spent to improve teaching and children's learning outcomes for those children to whom the extra funding is allocated.

- 5.12 The Council has a reciprocal arrangement for funding 2, 3 and 4 year old places with all local authorities, if a child who is resident in Derby City attends a Provider in another local authority area, the other local authority will fund the place. If a child lives out side Derby and attends the provider in Derby, the Council will fund the place. If a child transfers to a new provider in a different local authority area mid-term, the local authority in which the new provider is located will not fund the place until the start of the following term. However in exceptional circumstances where a child has been attending a Derby City childcare setting but moves out of the City before headcount date the Council may consider funding the weeks that the child attended in the Derby setting.
- 5.13 The Provider shall provide parents with clear information on what their FEEE offer is and should clearly state the attendance model available and any additional services that would be charged for. Parents should be given the opportunity to comment on the service that they receive and make suggestions on how it could be changed to better meet theirs and their child's needs.
- 5.14 The Council will undertake announced and unannounced checks and compliance audit checks to review financial and non-financial records. The Provider should give the Council access, on reasonable notice (this is usually at least 2 weeks), to all financial and non-financial records relating to FEEE funding subject to confidentiality restrictions. Where evidence of over payment or funding irregularities are identified the Provider shall return such funding to the Council and the Council will take all necessary steps to reclaim such funding including deduction of monies owed from future FEEE payments.

The Council is required to put in place compliance auditing and accounting procedures to ensure that there is clear accountability for anyone in receipt of public funding and must, therefore, ensure funding paid in respect of the FEEE is administered appropriately and used for the purpose it was provided.

This includes requiring the Provider to make copies of their income and expenditure (relating to the FEEE) available to the Council on request and keeping a detailed record of attendance of all funded children which includes start and finish time, non attendance and reason for non attendance. Appendix 5 provides an example of the information that must be included in an attendance register.

Each year The Council will request a copy of your pricing policy and a sample of invoices which can be sent securely via the provider portal.

The Council will carry out a compliance audit on a sample of providers each term. The audit will be carried out on all providers over a 30 month period. Providers new to the Directory of Providers will have their compliance audits within the first 6 - 9 months of receiving FEEE funding. The audit is to ensure that;

- Funding is being claimed in accordance and meets the requirement of the DfE's Statutory Guidance, the Provider Agreement and the procedures outlined in this guidance.
- Parents receive their child's FEEE in the form of a funded or purely free place.
- Check the accuracy of claims by checking the daily attendance register against the FEEE headcounts claims forms submitted.

The Provider will be contacted by telephone or email to arrange a convenient time for the compliance audit or to request any documents required for audit. During a routine audit, any term or terms from the previous financial years funding will be reviewed. This will include:

- Checking the attendance of all children on the claim forms.
- Checking forms of identification to confirm children's date of birth.
- Checking places have been provided free of charge.
- Verifying evidence of additional fees to parents and a clear and transparent invoicing system where FEEE funding is not shown as a monetary subsidy.
- Verifying how the FEEE funding has been spent. Legitimate spending will include staff, resources, administration and over all management costs.
- Clarifying and approving how deprivation and other specific funding has been allocated and used through receipts and appropriate audit trail.
- Parental complaints linked to the delivery of FEEE.

The following documents for the previous financial year must be available on the day of the audit or sent through the provider portal if requested:

- Daily register of funded children including the children's arrival and leaving times.
- Copies of the parent declaration forms.
- Copies of parents invoices.
- Business accounts.
- Signatory information.

A copy of the compliance audit form will be sent out prior to the meeting and the Provider will be required to complete this form in preparation of the audit. All audit documents for a spot check audit may be sent through the provider portal on request and if any documents are not made available or cannot be sent electronically we will undertake an audit at your provision. The audit may take up to a day, depending on the size of the provision. It may be necessary for a return visit to be made to complete the review.

An Audit Report will be sent within 4 weeks of the audit taking place, detailing any action required by the provider.

If the auditor finds any incorrect or inappropriate claims have been made the Council will take action to recoup any overpayment of funding. The Council may look to de-validate the Provider using the termination process. See section 13 for further guidance on the termination process.

The Council may, from time to time, carry out unannounced spot checks compliance audits and may also carry out audits as a result of a complaint raised by a parent. Checks may also be made with parents, in order to verify they have received their full entitlement.

5.15 The Provider shall provide the Council with the details of the bank account into which all funding is to be paid, such bank account **must** be in the same name as stated within the Provider Agreement and approved by the Council. The Provider shall inform the Council immediately if the bank account details change.

5.15.1 Childminders registered with a Childminding Agency must inform the Council if they want their funding to be paid directly into their own account or routed to the childminder through the agency.

5.15.2 The Council will ensure that none of the funding paid to childminders registered with an agency to deliver FEEE places is retained by the agency.

5.16 The Provider shall monitor children's attendance and shall work in accordance with the processes set out in this for monitoring attendance. If the Council is not satisfied with the actions taken by the Provider to monitor attendance, the Council will reclaim funding.

Attendance records of funded children should be monitored regularly by the Provider. Poor attendance should be followed up:

- if a child does not attend for 5 consecutive days and the reason for their absence is unknown, the Provider must contact the parent reminding them their place is funded by the Council and should be used on a regular basis
- if the child is absent for a further 3 days or over the next month does not attend on 3 or more days without a explanation then the Provider should send a letter they have further two weeks to demonstrate regular attendance or their child's place will be no longer be available
- if a place is being withdrawn for non-attendance the Provider must confirm this in writing to the parents and also submit an adjustment on the provider portal so we can reclaim an unspent funding.
- if children do not attend for the number of hours claimed this should also be monitored. Parents must be contacted and reminded their child should be attending for the number of weekly hours they have claimed, this is particularly relevant for parents who are claiming the full 10 hours of funding in any one day.
- if attendance does not improve over the next 2 weeks, a letter should be sent to the parent explaining if they do not return to using the number of hours they have claimed within two weeks, their place (funded hours) will be reduced. If funded hours are reduced the Council will reclaim any overpayment of funding based on your adjustment submission.
- copies of any correspondence should be kept and a note should be made on the register
- if a compliance audit highlights poor attendance and no evidence is available to suggest the parent has been contacted, funding will be reclaimed
- when reasonable attempts have been made and/or a child does not return after 2 weeks the Council must be informed by submitting an adjustment on the provider portal.
- the Council does not wish to penalise children or families where there are legitimate reason for non attendance such as on going health issues, however the Provider must evidence that they have been in contact with the parents and that information has been received to confirm issues to attendance.
- Children may be absent due to extended family holidays. Parents must inform the Provider of the period their child will be absent during a funding period. The child's place will be funded for a maximum of 2 weeks per academic year for holidays. If the child does not return, the Provider must inform the Council by submitting an adjustment claim on the online portal.

- Parent's choosing to access their FEEE on a stretched model must take into consideration that the children must attend full hours / full weeks in line with the funding contract they have signed. If children do not attend for more than 2 weeks of their funded contract hours due to holidays then any excess days above 2 weeks per academic year will not be funded by Derby City Council.

5.17 Where a setting is closed on a Bank Holiday the Provider can choose to offer the session elsewhere to make up the missed session, but the Council will not insist on this as most businesses and schools close for bank holidays. The Council will not reclaim funding for closed bank holidays.

All eligible 2, 3 and 4 year olds are entitled to FEEE for 570 universal hours per year and/or 570 extended hours per year. It is accepted that the Provider may have no choice but to close for a day or 2 where it would be illegal to remain open for example, if it was not possible to maintain welfare standards. It is the Provider's responsibility to put strategies in place to rectify problems promptly. In all cases of closure the Providers must notify the Council in writing of any period of closure lasting one week or more. Where possible, the Provider should make every effort to provide the funded children with additional hours to replace those they have missed during the period of closure. Where closures last for more than 5 consecutive days and the provider is not able to offer alternative hours to replace those missed the Council will claim back funding.

The school year is 39 weeks which has five inset days allocated within it. The Provider must offer 38 weeks FEEE to all eligible children and therefore staff training days should not be incorporated within the 38 weeks.

5.18 Complaint process:

In the event that a parent has concerns in relation to the funding of the FEEE, or the Provider's pricing policy, they should initially take the concern to the Provider. The Provider should investigate the concern according to their complaints policy. The Provider's complaints policy must include information on Ofsted and the Council and explain to parents how they can escalate their concerns if the Provider is not able to resolve the issue to their satisfaction. If the parent still feels the matter is not resolved then the parent can inform the Council of their concerns. The Council will then investigate the complaint and ensure that the Provider is acting in line with the Code of Practice and Provider Agreement. If the Provider is not acting within the criteria, then the Council will begin the revalidation process and / or take action to reclaim funding. The Council's complaints procedure will satisfy public law requirements and will be available to parents on request.

## 6. Quality, special educational needs and disability

Why does **quality** matter?

Research shows that the **quality** of early year's provision has a significant impact on outcomes for children in later life. The Government is committed to improving quality in all settings so that all children have access to high **quality** provision, which supports their learning and development.

The Childcare Act 2006 clearly states that local authorities have a statutory duty to improve the well-being of, and reduce inequalities between, young children.

Free Early Education Entitlement to high quality provision supports the improvement of outcomes for children, and the Council has a clear and consistent expectation of continuous **quality** improvement. The Council wants parents to be confident that the setting their child attends is aspiring towards the best **quality** provision, as research shows that, for some children, poor quality provision adds no value to their development in the long term. The aim for consistent and continuous improvement requires focused commitment and good organisation. It requires systematic reflection on practice and uses evaluation of children's outcomes to plan improvements. (Further reading can be found relating to the research results from the Effective Provision for Pre School Education (EPPE) project [www.ioe.ac.uk/projects/eppe](http://www.ioe.ac.uk/projects/eppe) )

- 6.1 The provider must:
- 6.1.1 Comply with the Statutory Framework for the Early Years Foundation Stage (EYFS) which is mandatory for all schools that provide early year's provision and Ofsted-registered early years providers in England. The EYFS sets the standard that all early years providers must meet to ensure that children learn and develop well and are kept healthy and safe;
  - 6.1.2 Ensure that owners and all staff members are aware of their duties and can demonstrate high quality inclusive practice as set out in the Special Educational Needs and Disability Code of Practice 2014, revised January 2015 and ensure that their practice has due regard to the SEND Code of Practice and Equality Act 2010 and meets the needs of individual children with SEN and disabilities;
    - 6.1.2.1 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. The Provider should ensure that the information available on both the Childcare Directory and the Local Offer Directory, published by the Families Information Service, fully explains their SEND support and helps parents to make informed choices.
    - 6.1.2.2 Have arrangements in place to support children with special educational needs and / or disabilities which include a clear approach to identifying and responding to SEND. Where appropriate the Provider should utilise the SEN inclusion fund and Disability Access Fund to deliver effective support, whilst making information available about their SEND offer to parents;
    - 6.1.2.3 Work with the Council to review at least annually, children's Education, Health Care Plans (EHCP) and to convene and hold annual review meetings on the Council's behalf when requested to do so by the Council;
  - 6.1.3 Comply with safeguarding legislation to ensure the safeguarding of children attending the setting and have clear safeguarding policies and procedures in place that link to 'Working Together to Safeguard Children' 2015 guidance and the City's guidance for recognising, responding, reporting and recording suspected or actual abuse;
    - 6.1.3.1 Have at all times a 'Lead Practitioner' who takes responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect;
  - 6.1.4 Group care providers should employ at least one member of staff trained in the use of the Common Assessment Framework. Settings can elect to have more than one member of staff so trained;
  - 6.1.5 Actively engage with the support provided by the EYQI Team to continually improve their provision;
  - 6.1.6 Permit setting visits by any member of the EYQI Team to support and enhance quality provision. These visits may encompass observations of the learning environment and daily practice with the children;

- 6.1.7 Demonstrate self-reflective practice by completing a Self-Evaluation Framework (SEF) and engage with the Council to determine the level of support planned for the Provider;
  - 6.1.8 Agree to advise the EYQI Team when any staff member achieves EYTS and when (these) staff members change provider;
  - 6.1.9 Agree to work with the EYQI Team to develop a strategy for improvement if the Provider's Ofsted grade is not good or outstanding;
  - 6.1.10 Report the Early Years Foundation Stage Profile scores to the nominated officer within EYQI Team, of any child at the setting in the Summer Term who will be 5 before the end of August and comply with the Council's moderation process.
- 6.2 The Council will:
- 6.2.1 Deliver the FEEE through providers who are Ofsted registered and schools which are exempt from registration;
  - 6.2.2 Provide information, guidance, support and training to all providers on the Ofsted Early Years Register regarding meeting the requirements of the Early Years Foundation Stage, 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;
  - 6.2.3 Will promote equality and inclusion, particularly for disadvantaged families, looked after children and children in need by removing barriers of access to FEE places and working with parents to give each child support to reach their full potential;
  - 6.2.4 Strategically plan support for children with special educational needs and / or disabilities to meet the needs of all children in their local area as per the Special Educational Needs and Disability Code of Practice;
  - 6.2.5 Be clear about their role and publish information on the support on offer locally via the Local Offer to meet the needs of children with special educational needs and / or disability (SEND) as well as their expectation of providers;
  - 6.2.6 Work with partners, in an open and transparent way, to improve the outcomes and reduce inequalities for all children under five;
  - 6.2.7 Support transition for children between providers;
  - 6.2.8 Provide guidance on safer recruitment;
  - 6.2.9 Work in partnership with providers to offer a personalised and appropriate level of support according to the identified needs of the setting;
  - 6.2.10 Consider the withdrawal of funding from providers who do not meet the requirement for qualifying for the FEEE.

## **7. Partnership working, social mobility and disadvantage**

- 7.1 The Council, in line with Part C of the Statutory Guidance 2018, shall work in partnership with parents and provide them with comprehensive information about their child's entitlement to FEEE and childcare options in their area so that all children are able to benefit from provision which meets their needs.
- 7.2 The Council will support parents who raise concerns where they are not satisfied that their child has received their FEEE in accordance with legislation or as set out in this Agreement and in Early Education and Childcare Statutory guidance for local authorities.
  - 7.2.1 The Council will expect the parents to have followed the Provider's own complaints procedure and will only become involved where the parent's concerns have not been resolved directly with the Provider.

- 7.2.2 If a parent is not satisfied with the way in which their complaint has been dealt with by the Council or believes that the Council has acted unreasonably, they can make a complaint to the Local Authority Ombudsman. Such a complaint will only be considered when the local complaints procedures have been exhausted.
- 7.3 The Provider should ensure that they have a complaints procedure in place that is published and accessible for parents who are not satisfied that their child has received their FEEE in the correct way, as set out in this agreement and in the Early Education and Childcare Statutory Guidance for local authorities.
- 7.4 The Council will aim to work in partnership with providers individually and where providers are working in local partnerships. The Council will aim to promote partnership working between different types of providers, including childminders, across all sectors and encourage providers to offer flexible provision alongside other providers.
- 7.5 The Provider shall support parents to develop an understanding of the Early Years Foundation Stage so that parents can support their child's development and be of value as the child's first early educators.
- 7.6 The Provider should work in partnership with parents, carers and other providers to improve provision and outcomes for children in their setting. The provider shall consult and obtain feedback from parents accessing their provision on how the service is being delivered. An interactive toolkit has been developed by the Family and Childcare Trust to help providers set up or join a partnership, maximise the benefits of working together and tackle the challenges joint working can bring. The link below takes you to the toolkit:  
<https://www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-toolkit>
- 7.7 The Provider should discuss and work closely with parents to agree how a child's overall care will work in practice when their FEEE is split across different providers to ensure smooth transitions for child.
- 7.8 The Provider should ensure that they have identified the disadvantaged children in their setting as part of the process for checking Early Years Pupil Premium (EYPP) eligibility. Providers will use EYPP and any locally available funding streams or support to improve outcomes for this group.
- 7.9 The provider will work in partnership with the Council's Families Information Service (FIS) to actively promote the 2, 3 and 4 year old FEEE offer. The Provider should ensure that parents have access to information on the complete government's childcare offer and what they may be entitled to. For example this could be done by linking where suitable from the Provider's web site to the Childcare Choices website and to the Childcare Calculator on gov.uk.
- 7.10 The provider must ensure that they give data protection permission to FIS to promote their service on the Enhanced Childcare Directory and via the public helpline, the provider must on a termly bases use the on-line provider portal to update their service information to ensure that parents can access pertinent information on funded places. Failure to give data protection permission to promote the provider's service or to update service information on a termly basis will jeopardise the provider's listing on

the Directory of Providers. Certain Providers may request via Ofsted that their details be kept anonymous and the Council must ensure it complies with those requests.

## **8 Indemnity**

For further guidance on this section please contact the Council Legal Team.

## **9 Insurance**

For further guidance on this section please contact the Council Legal Team.

## **10 Intellectual property rights**

For further guidance on this section please contact the Council's Legal Team.

## **11 Confidentiality and freedom of information**

All information collected as part of the census, funding process, business form and audit will remain confidential unless the local authority has to conform to the requirements of the Freedom of Information Act.

## **12 Data protection and safeguarding**

12.1 With respect to the Parties' rights and obligations under this Agreement, the Parties agree that the Council is the Data Controller and that the Provider is the Data Processor as those terms are defined in the DPA. Schools/Early Years Settings, Local Authorities (LAs), the Department for Education (DfE), and a number of other organisations are all 'data controllers' under the Data Protection Act (2018) in that they determine the purpose(s) for which personal data (i.e. data about living individuals from which they can be identified) is processed and the way in which that processing is done.

Data controllers have to provide 'data subjects' (individuals who are the subject of personal data) with details of who they are, the purposes for which they process the personal data, and any other information that is necessary to make the processing of the personal data fair, including any third parties to whom the data may be passed on. This is done by what is referred to as a 'Privacy Notice'.

Children and parents, as data subjects, have certain rights under the Data Protection Act, including a general right to be given access to personal data held about them by any data controller.

12.2 Both Parties shall comply at all times with the Data Protection Requirements and shall not perform their obligations under this Agreement in such a way as to cause the other Party to breach any of its applicable obligations under the Data Protection Requirements. The Council will use an encrypted messaging facility to exchange child/family information securely by email. Providers must ensure that child/family information is shared securely and must not send full children's/parents' details via non-encrypted email and where the need arises, should only put the child's/parents' initials and date of birth in non-secure email correspondence.

12.3 Both Parties shall indemnify and hold harmless other Party from and against all liability (including any imposition of any monetary penalty under Section 55A of the DPA) and loss suffered and any costs and expenses reasonably and properly

incurred by the other Party which arise directly or in connection with the either Party's data processing activities under this Agreement, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Requirements by either Party, its employees, servants, agents or its sub-contractors.

- 12.4 When processing and publishing information both Parties must ensure that publication is compliant with the provisions of the Data Protection Act 2018 and the General Data Protection Regulations (GDPR), and have due regard to all information sharing principles set out under the legislation. Where personal information is processed, it will need to be kept up to date and both Parties will need to ensure that the rights of their data subjects under the legislation are observed. For more information about the obligations of organisations and the rights of the individual please visit the Information Commissioner's website.
- 12.5 The Provider must carry out appropriate checks with the Disclosure and Barring Service (DBS) (previously CRB checks) on all staff (including volunteers and agency staff) engaged to provide, or supervise the provision of the service. If the checks reveal information which would make the person unsuitable for work with children the Provider shall not employ or otherwise use such as in a volunteering or training capacity such persons in any way.
- 12.6 In line with Ofsted requirements the Provider is responsible for assessing:
- whether or not the registered person and day-to-day manager are suitable to be in charge of a day care setting,
  - that proper recruitment and employment procedures have been put in place,
  - and that staff working directly with children or having unsupervised access have enhanced checks and are not barred persons within the terms of the vetting and barring scheme operated by the disclosure and barring service.
- 12.7 If the Provider dismisses or removes an employee or other staff member because they have harmed a child, or the Provider would have dismissed them had they not left, the Provider must promptly notify the disclosure and barring service, Ofsted and the LADO.
- 12.8 The Provider shall be entirely responsible for the terms and conditions of employment of staff that provide the service. The Provider agrees that contracts of employment for childcare practitioners working at the childcare provision will not contain any terms that would restrict practitioners from working at other childcare provisions within Derby City should they wish to be employed by one or more provider or their employment with the Provider cease for any reason. If the Provider is a maintained school the terms and conditions of employment of staff who shall provide the service should comply with national guidelines and be subject to any policies and procedures set by the Council.
- 12.9 The Provider undertakes to ensure that the procedures for the safe recruitment and selection of staff and volunteers working with children accord with the minimum standards specified by the Council's Children and Young People's Service and guidance issued by the Derby City's Local Safeguarding Children's Board prior to the commencement of the service and continue to meet these standards on an on-going basis.

- 12.10 The Council has overarching responsibility for safeguarding and promoting the welfare of all children and young people in the City. The Council has a number of statutory functions under the 1989 and 2004 Children Acts which makes this clear, and the 'Working Together to Safeguard Children' 2015 guidance sets these out in details. The Council will contribute to the safeguarding and promote the welfare of children and young people in the City. The Provider must ensure that if any issues arise in relation to child protection they shall be dealt with in line with the requirements of Working Together to Safeguard Children (2013) (or any replacement or supplementary guidelines), the Derby City Council Child Protection Policy and the protocols published by Derby City's Local Safeguarding Children Board.
- 12.11 The Provider shall have a practitioner designated to take lead responsibility for safeguarding. The Provider shall ensure that the lead practitioner has attended level one and level two safeguarding training or does so as soon as practicable after the date of this agreement. The Provider will ensure that all staff have up to date knowledge of safeguarding issues, can identify signs of possible abuse and neglect at the earliest opportunity and can respond in a timely and appropriate way.
- 12.12 The Provider shall have written policies to describe how it will safeguard and protect children attending the childcare provision from harm, which shall be made available to the Council on request. These must include policies on safer working practices, on dealing with allegations of harm to children by staff or other adults and on whistle blowing.
- 12.13 The Provider must provide all requested reports and information about any child attending the childcare provision for any multi-agency meeting in accordance with Derby City Council's Local Safeguarding Children's Board

### **13 Termination and withdrawal of funding**

- 13.1 The Council may terminate this Agreement with immediate effect by written notice without liability for compensation or damages if the Provider:
- 13.1.1 fails to gain and or maintain the minimum Ofsted inspection outcome for delivering 2, 3 and 4 year old funded places; or
  - 13.1.2 is suspended by Ofsted from delivering a childcare service or
  - 13.1.3 is in breach of statutory requirements or
  - 13.1.4 safeguarding issues are identified by Ofsted or
  - 13.1.5 ceases to be registered with Ofsted on the Early Years Register; or
  - 13.1.6 is in material or persistent breach of this Agreement and, in the case of a breach capable of remedy, fails to remedy the breach in accordance with the process set out in clause 13.2 below after receipt of a written notice specifying the breach and requiring it to be remedied. For the avoidance of doubt if the Provider fails to meet the requirements set out in this Agreement this will amount to a material breach of this Agreement for the purposes of this clause; or
- 13.2 Where the Provider receives notice of material or persistent breach capable of remedy in accordance with clause 13.1 above the following process shall apply:
- 13.2.2 within [5] Business Days of receipt of the notice, the Provider shall acknowledge receipt of the notice in writing;
  - 13.2.3 if the Provider:
    - 13.2.3.1 acknowledges receipt of the notice in accordance with clause 13.2.2, the Provider and the Council will: or

13.2.3.2 does not acknowledge receipt of the notice in accordance with clause 13.2.2 or does not co-operate with the Council as referred to in Cl 13.2.3.1 above , the Council alone will:

develop a Remediation Plan, which shall be formally issued to the Provider by the Council. The Provider shall comply with and deliver the requirements specified in the Remediation Plan within the timescale specified in such plan.

13.2.4 If the Provider:

13.2.4.1 completes such Remediation Plan to the satisfaction of the Council, the Council's nominated officer will write to the provider stating that, subject to no further related material or persistent breach of this Agreement, no further action will be taken by the Council;

13.2.4.2 does not complete such Remediation Plan to the satisfaction of the Council, the Council's nominated officer will write to the Provider stating that from the start of the next academic term, the Provider will no longer be listed on the Directory of Providers and shall receive no further payments from the Council under this Agreement ("Devalidation Notice").

13.3 The Council may terminate the Agreement forthwith where:

13.3.2 The Provider is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into either voluntary (otherwise than for reconstruction or amalgamation), or compulsory liquidation or a receiver or administrator is appointed over their assets; or

13.3.3 The Provider is a charity or organisation which is dissolved, wound up or is otherwise brought to an end; or

13.3.4 The Provider has been the subject of a change in ownership or control, which in the Council's opinion, acting reasonably, results in an effective change in the identity of the provider

13.3.5 In the event of the Provider entering financial difficulties it must inform the Council as soon as possible. In the event that the provider has received any funding in advance from the Council, the Council shall be entitled to recover such funding.

13.4 The Council may terminate the Agreement forthwith if the Provider acts in a fraudulent manner, has an action for fraud brought against their business or is convicted of fraud by a recognised court of law.

13.5 If either Party delays in acting upon a breach of this Agreement, that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Agreement that waiver is limited to that particular breach.

13.6 Either Party may terminate this Agreement by providing the other Party with one month's written notice, whereby the Provider shall cease to be registered on the Directory of Providers.

13.7 In the event that the Provider is removed from the Directory of Providers, the Provider may subsequently be re-instated provided that the Council is satisfied that the grounds for the removal no longer apply and have not been in evidence for a minimum period of one term.

13.8 The Council shall have no liability in respect of any costs incurred after the date of expiry or termination, howsoever arising.

13.9 Within ten days of the termination or expiry (howsoever arising) of this Agreement, the Provider shall return to the Council all manuals, information, data and other

documents and materials provided to or prepared by the Provider in pursuance to this Agreement together with all Confidential Information and data received from the Council, in connection with this Agreement, and any sums prepaid by the Council in respect of services not provided by the Provider by the date of expiry or termination of this Agreement.

## 14 Force Majeure

For further guidance on this section please contact the Council's Legal Team.

## 15 Notices

### Obtaining the Privacy Notice

The Privacy Notice is available at:

<https://www.gov.uk/government/publications/data-protection-and-privacy-privacy-notices>

Details can be found in appendix 15.

### Issuing the Privacy Notice

Display a copy of the Privacy Notice on your notice board for visiting parents and carers. Ensure that you have a process in place to issue this Privacy Notice to all new parents/carers/children. This can be done at the same time as other communications are issued e.g. as part of a brochure, or an induction pack. Alternatively you could issue via email. Check - You do **not** have to issue the additional information document, as parents and carers can access this information for themselves via the Council website (<http://www.derby.gov.uk/council-and-democracy/open-data-and-freedom-of-information/data-protection-act/>).

Should parents be unable to access the Council's website you should arrange for a paper copy of the additional information document to be made available upon request. You do not need to issue this Privacy Notice to all of your children and/or their parents and carers if you have, in the past, already issued them with a copy of the Fair Processing Notice.

## 16 Dispute resolution and appeals process

- 16.1 Any question or difference which may arise concerning the construction, meaning or effect of this Agreement or any matter arising out of it shall be in the first instance referred to the representatives of the Provider and the Council for resolution and discussion as soon as reasonably possible and in any event within twenty one days of such referral. If the matter is not resolved at this meeting, the escalation will continue through a further level of management as soon as reasonably possible and in any event within a further twenty one days.
- 16.2 If the Provider is not satisfied with the way in which their complaint has been dealt with by the Council or believes that the Council has acted unreasonably, they can make a complaint to the Local Authority Ombudsman. Further information on the Ombudsman service can be found at <http://www.lgo.org.uk/>. Such complaints will only be considered when the local complaint procedures have been exhausted.

16.3 Neither Party may initiate any legal action until the process has been completed unless such Party has reasonable cause to do so to avoid damage to its business or to protect any right of action it may have.

## **17 Entire Agreement**

For further guidance on this section please contact the Council's Legal Team.

## **18 Assignment and sub contracting**

For further guidance on this section please contact the Council's Legal Team.

## **19 Statutory requirements**

For further guidance on this section please contact the Council's Legal Team.

## **20 Bribery and corruption**

For further guidance on this section please contact the Council's Legal Team.

## **21 Equalities Act**

For further guidance on this section please contact the Council's Legal Team.

## **22 Third part rights**

For further guidance on this section please contact the Council's Legal Team.

## **23 Governing law and jurisdiction**

For further guidance on this section please contact the Council's Legal Team.

## **24 Counterparts**

For further guidance on this section please contact the Council's Legal Team.

## Appendix

### Appendix 1

#### Early Education Single Funding Formula for 3 and 4 year old funding

From April 2011, all local authorities must fund providers from all sectors on the basis of a single, transparent, locally defined, participation-led funding formula – the Early Years Single Funding Formula (EYSFF).

The following headings feature within the formula:

- basic hourly rate
- hourly weightings - additional amounts for extra need
- number of hours participation - the method of counting participation must be the same for all providers
- other weightings.

#### Additional weightings

Additional weightings to the basic rate reflect the needs of individual children and prioritise funding, for example deprivation. Below are the additional weightings that feature within the formula:

- **Deprivation**  
Meeting the needs of deprived children is a key part of the Government's objective in closing the attainment gap. The factor for deprivation is based on the index of multiple deprivations (IMD) and maps individual children. A child residing in the top 40% most deprived areas attracts additional funding.
- **English as an additional language (EAL)**  
Children who speak English as an additional language (EAL) attract additional costs to settings due to the need for additional support.

#### Child led weighting and funding for 3 and 4 year olds

These weightings are included within the annual budget statement and will vary from provider to provider dependant on the children attending.

#### English as an additional language

This is the projected/anticipated weighting associated with the children who attended a provision last financial year. Its aim is to give providers an indication of the levels of funding for the forthcoming year. The funding is based on actual pupil level data and therefore final calculations cannot be completed until data from individual children is collated at head count. If a provider regularly draws from a population where EAL is high, then this weighting will be similar year on year. If last year a provider had a significantly high number of children with EAL and this year there are very few children the actual amount for the EAL weighting paid by the Council will be lower than the forecast.

### **Deprivation (index of multiple deprivations)**

This funding is specifically allocated on a post code basis and will be an estimated figure based on the postcode details of children who attended the provision during the last financial year. If a provider consistently draws children from areas of significant disadvantage this figure will be similar year on year. If a provider suddenly has significant increase or decrease of families attending from such a postcode this figure could vary.

## Appendix 2

### Invoicing example

# INVOICE

Provider's  
address details

INVOICE NO. 1

DATE [Date]

When invoice is issued

TO

[Company Name]

[Street Address]

[City, ST ZIP Code]

[Phone]

Parent's details

When payment is due

TERMS Due on receipt

QTY	DESCRIPTION	TOTAL
1	fee's (childs name) w/c Mon 9-3 Tues, Wed, Thurs, Fri 9-3	£10.00
1	funding: (child's name) (15 hrs)	
1	Fee's(childs name) w/c Mon 9-3 Tues, Wed, Thurs, Fri 9-3	£10.00
1	funding: (child's name) (15 hrs)	
1	fee's (childs name) w/c Mon 9-3 Tues, Wed, Thurs, Fri 9-3	£10.00
1	funding: (child's name) (15 hrs)	
1	fee's (childs name) w/c Mon 9-3 Tues, Wed, Thurs, Fri 9-3	£10.00
1	funding: (child's name) (15 hrs)	
<b>TOTAL DUE</b>		<b>£40.00</b>

Cost of weekly additional  
hours or services

Free early education  
entitlement – no cost/fee  
should be recorded

Total amount payable and  
due for the invoiced  
period

## **Appendix 3**

### **Annual budget statement**

<https://www.derby.gov.uk/education-and-learning/schools-and-colleges/schools-financial-information/>



## Appendix 5

### Compliance audit form

Provider Name

Date of Audit / /   Unannounced Visit  Yes  No Term audited:  Summer  Autumn  Spring 20\_\_ Year:

Owner/Proprietor

Person responsible for submitting termly headcount submissions

Ofsted registration URN  Ofsted registered places  FEEE number of places

Ofsted Grade  Outstanding  Good  Satisfactory  Inadequate Date of Inspection / /

#### FEEE PROCESS AND INFORMATION

How does the provider inform parents of the FEEE process?			
Does the provider have links on their webpage or forms that go out to parents for the Families Information Service and/or Childcare Choices?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the provider registered to provide Tax Free Childcare?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Does the provider actively promote and offer the Tax Free Childcare?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
What FEEE models does the provider offer per day? (3hr, 5hr, 7.5hr, 10hr)			
Does the provider stretch funding over more than 38 weeks of the year? If yes, what stretched model is offered?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Does the provider have a compliant admissions policy for funded places in place?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
What are the maximum purely funded places on the admissions policy the provider will offer?	2YO	3 and 4 YO	
Has the provider received any complaints from parents about FEEE charges or delivery	<input type="checkbox"/> Yes	<input type="checkbox"/> No	*** Please provide details of this

Has the provider updated FIS by completing the 'Quick Update' form within the last 6 months?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Has FIS been informed of any significant changes to the operational or management structure of the provider?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Does the provider take a deposit from parents, payable in advance to secure their child's FEEE place?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Does the provider require parents to pay a registration fee as a condition to taking up their child's funded place?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		

### FEEE CHARGES AND FUNDING FORMS

Are charges for any extra childcare hours, additional services and consumables, on top of the FEEE clearly communicated on a charging policy and given upfront to parents?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Do invoices clearly identify FEEE hours as FREE at the point of delivery and not shown as a monetary value?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Does the provider charge parents 'top up fees' (the difference between the provider's usual fee and the funding they receive from the Local Authority to deliver funded places)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Does the provider use the synergy online portal to check funding allocated for 3&4 year old weightings, EYPP, EAL, DEP and DAF and ensure this funding is allocated appropriately each term to meet the child's needs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Are there correctly completed and signed parental contracts for all children receiving the FEEE with relevant consent to perform any ECS EYPP and Extended Entitlement checks?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Are all financial records kept for a minimum of seven years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		

**FEEE REGISTERS AND ATTENDANCE MONITORING**

What type of register is used:

- Daily       Weekly       Other

Please rate the quality of the registers:

- Excellent     Good       Fair       Poor

Do children's names, claimed hours and actual attendance submitted on the portal match the attendance register?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Does the provider's register state the child's arrival and leaving times, and clearly evidence where funding is being taken each day?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Have absences been recorded on the register?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Is there a record of why the absences occurred?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Is an attendance monitoring system in place to record and monitor poor attendance?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Have adjustments been submitted on the portal for funded children that have left or started mid-term?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Have there been any full closure days? If yes, was this reported to the Local Authority?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		

**FINAL COMMENTS AND ACTIONS:**

Name of Derby City Council FEEE Officer:		Name of Provider FEEE Contact:	
Signature:		Signature:	
Date:		Date:	

## **Appendix 6**

### **Derby City Council Equality and Diversity Policy**

<https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/dataprotection/equality-and-diversity-pn-l2-v2.pdf>

### **Other documents**

#### **Parents leaflet**

<http://www.derby.gov.uk/community-and-living/childcare/information-for-parents/>

## **Appendix 7**

### **Parental Contract for Free Early Education Funding (FEEE)**

<https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/education/feee-parental-contract-may-2018.pdf>