

This record relates to urgent decisions taken by Chief Officers under the Scheme of Delegation to Officers Paragraph 7(2).

**RECORD OF URGENT DECISION**

**TAKEN BY** Deb Austin, Interim Executive Director Families, Children & Learning

**SUBJECT:** Compensation Payment for Early Years Providers  
**CONTACT OFFICER:** **Caroline Parker Head of Early Years and Strategic Lead for Whole Family Working**

**REASONS FOR URGENCY AND WHY NOT PRACTICABLE TO HOLD A SPECIAL MEETING OR URGENCY SUB-COMMITTEE:**

This paper outlines recommendations for Early Years Free Entitlement (EYFE) coronavirus-related compensation payments, in accordance with DfE guidance, for early years providers who had a lower number of children this term compared with autumn 2019. These payments are based on the actual number of children attending on the headcount day in October 2020. The payments need to be made as soon as possible to ensure early years providers have enough funding to allow them to continue to operate.

Support for childcare provision in the city is an important part of its economic recovery following the pandemic.

**DETAILS AND OUTCOME OF CONSULTATION WITH THE CHAIR/DEPUTY CHAIR OF RELEVANT COMMITTEE AND OPPOSITION SPOKES:****DATE OF CONSULTATION WITH CHAIR/DEPUTY CHAIR AND OPPOSITION SPOKES:**

**Chair of CYPS – 20.11.20 & 26.11.20**

**Oppositions Spokespeople – 27.11.20**

**THE DECISION:**

To note the use of officer urgency powers by the Interim Executive Director, Families, Children & Learning to agree the recommendations for funding compensation payments for early years providers:

- a) Providers of EYFE for two year olds to be compensated at 100% of the difference between autumn 2020 hours, and an average of their total hours from autumn 2017, 2018 and 2019.
- b) Private, voluntary and independent providers of EYFE for three and four year olds to be compensated at 60% of the difference between autumn 2020 and autumn 2019 hours and maintained providers (schools) to be funded at 100%.

- c) The small number of childminders who may be eligible to apply for compensation will be considered individually.

## REASONS FOR DECISION

### DfE guidance for autumn 2020

DfE guidance "[Use of free early education entitlements funding during coronavirus \(COVID-19\)](#)" issued on 20<sup>th</sup> July 2020 states that for autumn 2020

"local authorities should continue to fund providers which are open at broadly the levels they would have expected to see in the 2020 autumn term had there been no coronavirus (COVID-19) outbreak.

"The intention is to fund on the basis of 'as if autumn term 2020 were happening normally'. In order to do this, local authorities might, for example, use the numbers of children in places in the previous autumn to inform funding levels this autumn."

In normal circumstances our EYB allocation for autumn 2020 would be based on the January 2021 census. However, because the number of children taking up EYFE may not have returned to normal levels by January 2021 when the census is carried out, local authority funding for autumn 2020 will be based exceptionally upon the number of children in the January 2020 census.

Early years and childcare providers are funded for EYFE places based upon children's attendance. The funding rate for all providers for two year olds is £5.28 per hour, and for three and four year olds it is a base rate of £4.14, with supplements for quality and deprivation. The average funding rate for three and four year olds, including these supplements, is £4.36 per hour. Funding comes from the early years block of the dedicated schools grant which is ring-fenced for EYFE.

The majority of early years providers offer EYFE for two, three and four year olds, with the exception of most independent schools and maintained nursery classes which only offer places for three and four year olds.

Payments are made twice a term. The first payment is a 75% upfront estimate based on children's attendance in the equivalent term the previous year, and the second is a balancing payment based on children's actual attendance, made towards the end of the term.

For the 2021 spring term the DfE expects to return to the normal funding process but has stated that they are keeping this under review, and that further guidance will be issued "around Christmas".

The guidance had been discussed with the DfE, and it was explained to them that overall hours for the autumn term 2020 have not reduced significantly. The DfE understands this and it is hoped that they are taking it into consideration when producing guidance for spring term 2021. It is believed that other local authorities are in the same position. The DfE have advised that the minister's main concern is overall sufficiency of early years provision; there is currently enough

provision in Brighton & Hove. The DfE also emphasised fairness, transparency and rationale in local authority decision making for autumn 2020.

The proposals below include use of the EYB projected 2020/21 underspend, and so assume that we will return to the normal funding process for spring 2021 i.e. that providers are paid for actual children attending, with no compensation for what might have been were it not for Covid.

Schools' Forum was consulted on these proposals on 7<sup>th</sup> December 2020. The decision rests with the council.

It is not possible to delay this decision until a full committee meeting because EYFE compensation payment to early years providers need to be made in the autumn term because that is the term to which the payment relates. The amount of money in the early years block of the DSG available for compensation was not known until after the October 2020 headcount when providers submitted their hours for that term. After that time was needed to review different compensation options. Delaying the compensation payment until the spring may jeopardise the finances of some early years providers.

### **Proposals for compensation payments for autumn 2020**

Private, voluntary and independent (PVI) early years providers have submitted their actual hours for two, three and four year olds for the autumn term, and have been paid accordingly.

For two year olds, overall hours were down on autumn 2019 by about 15%, and for three and four year olds there was a reduction of around 2%. However, the reduction in hours was not consistent across all providers. For three and four year olds, 47% of providers had more hours, and for two year olds 40% of providers had more hours compared with autumn 2019.

Government guidance appeared to assume that the majority of providers would have had lower hours than in autumn 2019 and therefore EYB underspend (adjusted in accordance with the January 2020 census) would be sufficient to make up the difference, which is not the case.

The proposals to compensate PVI providers who had fewer hours this term compared with last year are as follows:

#### **Two year olds**

Providers of EYFE for two year olds to be compensated at 100% of the difference between this autumn's hours, and an average of their total hours from 2017, 2018 and 2019 autumn terms. The payment to be made at the normal funding amount of £5.28 per hour. While the DfE guidance suggests that autumn 2019 could be considered in making compensation payments (which has been done for three and four year olds) for two year olds the average of hours for the three previous autumns is being used because hours are more variable than those for three and four year olds.

The 100% payment is proposed because of the loss to providers as a result of lower take-up by children of this age this term, likely to be a direct result of coronavirus – two year olds were not prioritised for a place when the general lockdown ended in June 2020, and parents of younger children may have been less likely to take up their funded place because of anxiety about the pandemic.

In addition, funded two year olds are the most disadvantaged children and so settings which take a large number are supporting the council's early years priorities. Two year olds are also more expensive to provide for because of the higher staff:child ratio, which is not compensated for fully by the higher hourly rate.

This proposal compensates:

- 54 PVI providers at an average of £2,772 per provider (£149,701)
- 3 maintained settings at an average of £2,739 per school (£8,216)

**The total cost is £157,917**

### Three and four year olds

For maintained providers to be compensated at 100% of the difference between autumn 2019 and autumn 2020, with PVI providers at 60%. A total cost of **£278,068**. This would be within the anticipated 2020/21 underspend but is likely to be viewed as unfair by PVI providers and against the DfE requirement that local authorities fund all types of providers at the same base rate.

This option is being recommended because there is not enough funding available in the early years block for 2020/21 to fund all providers at 100%. Maintained providers are anticipating a 100% payment i.e. no clawback from their early years budget, as the September 2020 CYP committee paper on the consultation on the closure of Hertford Infant and Nursery School nursery class stated that this approach would be taken, in line with DfE guidance. Advice was also provided to Schools Forum in October 2020 to say:

“The government has recognised the impact that Covid-19 may have on the intake of pupils into nursery provision that is funded through the early years free entitlement provision. For the autumn term government advice is that LAs should continue to fund providers at the levels they would have expected to see had there been no Covid-19 outbreak. The LA will work with nursery schools and primary schools with nursery classes during the autumn term to ensure this arrangement is reflected. This means schools should not be subject to budget clawback where nursery numbers are lower due to Covid-19.”

The rationale for the difference between the compensation payment to maintained providers at 100% and PVI providers at 60% is

- Early years foundation stage prescribed staff:child ratios for maintained providers are fixed at two staff to 26 children and so it is difficult for maintained providers to adapt their staffing when lower numbers of children attend. For this reason staff costs in maintained settings are more fixed compared with PVI providers.
- Where there is insufficient funding for maintained nursery provision there will be pressure on the school's wider budget
- PVI providers were able to apply for Covid-19 local discretionary grants and have had a 2020/21 non-domestic rates holiday. However it is also recognised that many providers will have lost substantial income in fees from parents.

This proposal compensates:

- 56 PVI providers at an average of £3,646 per provider (£204,173)
- 10 maintained settings at an average of £7,389 per school (£73,895)

**The total cost is £278,068**

The difference in compensating PVI providers at 60% and 100% is between £8,500 and £3,000 for 18 providers, and £2,700 and £1,000 for a further 22 providers. For the remaining 16 the difference is less than £1,000. The overall average difference between compensation at 60% and 100% is £2,431.

### **Childminders**

Childminders who have fewer children this term as a result of coronavirus have been asked to apply for compensation.

This could be, for example, where a parent previously used the childminder and another setting but is now unable to do this in order to avoid using more than one provider.

Childminders have been asked to apply for compensation where this is the case and payments will be made similarly to PVI providers (i.e. 100% for two-year olds, 60% for three and four year olds)

It is estimated that the cost of compensating childminders will be up to £3,000 and will apply to approximately eight childminders.

### **Total cost £3,000**

Providers who get compensation payments but subsequently take more children this term will have these payments reduced accordingly

### **DETAILS OF ANY ALTERNATIVE OPTIONS CONSIDERED:**

#### **Two other options were considered.**

#### **Option B**

All providers of EYFE for three and four year olds to be compensated at 100% of the difference between this autumn's hours and their hours for autumn 2019. This proposal compensates 10 of 16 maintained providers with an average payment of £7,389. It compensates 56 PVI providers with an average payment of £6,077. The cost is £340,288 for PVI providers and £73,895 for maintained providers at a total cost of **£414,183** This proposal would require use of the carry forward from the underspend in the EYB for 2019/20. The option is not recommended as the carry forward from the EYB for 2019/20 is being set against other costs in the DSG for 2020/21 so would result in an overspend on the DSG.

#### **Option C**

Compensating both PVI and maintained providers at 60% of the difference between this autumn's hours and their hours for autumn 2019, which would bring the expenditure within the anticipated underspend for 2020/21 and not require use of the carry forward from 2019/20. This would compensate 56 PVI providers with an average payment of £3,646, at a total cost of £204,173. The cost for maintained providers would be £44,337 with an average payment of £4,434. The total cost for this option is **£248,510**. This option would lead to a total reduction in funding of £29,558 for 10 schools. The average reduction (the difference between 100% and 60% compensation) would be £2,956 and the maximum difference in compensation for a school

would be £5,375. This option is not recommended because this would jeopardise wider school budgets.

### Summary of proposed compensation payments

Type	Compensation	Total cost	Number of providers to be compensated	Average payment
Two year olds, PVI and maintained	100% of difference between hours in autumn 2020 and the average of autumns 2017/2018/2019	£157,917	56	£2,770
Three and four year olds maintained	100% of difference between hours in autumn 2020 and autumn 2019	£73,895	10	£7,389
Three and four year olds PVI	60% of difference between hours in autumn 2020 and autumn 2019	£204,173	56	£3,646
Childminders	Based on individual circumstances but using percentages as applied to PVI providers above	£3,000 <sup>1</sup>	6 <sup>2</sup>	
<b>Total</b>		<b>£438,985</b>		

### LEGAL IMPLICATIONS:

DfE guidance on the Use of free early education entitlements funding during coronavirus (COVID-19) includes the following statements. "From the start of the autumn term 2020, local authorities should continue to fund providers which are open at broadly the levels they would have expected to see in the 2020 autumn term had there been no coronavirus (COVID-19) outbreak" and "The intention is to fund on the basis of 'as if autumn term 2020 were happening normally. " Based on statements such as these, PVI providers may have an expectation that they will be compensated at 100%, and not 60%. Legitimate expectation is a basis on which an aggrieved party can seek a judicial review of a public body's decision.

However, Government guidance is not binding on the council. It can be departed from with good cause. The reasons for departure should be documented in the interests of good and transparent decision making. The reasons for departure are set out in the Record of Urgency Decision.

<sup>1</sup> Estimate

<sup>2</sup> Ibid

The requirement in the Guidance for local authorities to be transparent in the approach they take will be met by the publication of the Urgency Decision at the next scheduled meeting of the Children, Young People and Skills Committee.

**Lawyer consulted: Liz Woodley**

**Date: 24 November 2020**

### FINANCIAL IMPLICATIONS:

TBM 7 projected an EYB underspend of £204,000 for 2020/21 free entitlement budgets. The change to incorporate making compensation payments will be shown in TBM 8.

DfE guidance states that “local authorities should be transparent in the approach they take”. We will ensure that providers are clear about the basis for their payment, but any 60% payment for three and four year olds may be viewed as inconsistent with government guidance. Our approach is also likely to be subject to a freedom of information request (this was the case for our EYB underspend last year) with [comparisons between local authorities](#) published.

The additional amount for Option A compared with Option C could be found from the 2019/20 EYB underspend carry forward of £140,000. This is being used to offset wider pressures in the 2020/21 DSG, in particular mitigating the overspend reported in the high needs block. If this was re-directed to allow 100% compensation payments for three and four year olds this would have a significant impact on the 2020/21 DSG budget position.

The table below summarises the implications for TBM of making compensation payments in line with the options above. The updated TBM position includes the impact of revised forecasts for spring term.

Scenario	Free Entitlement Budgets Forecast £'000	Other DSG Budget Areas Forecast* £'000	Overall DSG Budget Forecast £'000
Current TBM position before compensation payments	(204)	552	348
Recommended option Updated TBM position assuming 60% compensation payments for 3&4-year olds (and 100% for maintained)	(4)	552	548
Option B Updated TBM position assuming 100% compensation payments for 3&4-year olds (and 100% for maintained)	132	552	684
Option C Updated TBM position assuming 60% compensation payments for both maintained and PVI 3&4-year olds	(37)	552	515

The other DSG budget areas overspend forecast of £552k is made up of the following key components:

<b>Budget Area</b>	<b>£'000</b>
High Needs Block	484
Central Services Schools Block	129
Centrally retained element of Schools Block	48
Other non EYFE elements of EYB	31
Unallocated Balance of 2019/20 DSG Cfwd	(140)
<b>Total</b>	<b>552</b>

Finance Office Consulted: Steve Williams Date: 24 November 2020

**DATE OF NEXT COMMITTEE MEETING TO WHICH THE DECISION WILL BE REPORTED:**

Children, Young People and Skills Committee 11 January 2021

**Date:****Signed:**

Interim Executive Director Families,  
Children & Learning



Logged by Democratic Services  
Officer for Annual Report:

Name:

Date: