

# **Funded early education for two, three and four-year- olds**

**Provider Agreement**

**1 September 2020 – 31 August 2021**



**SURREY**

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# 1 Overview

## 1.1 Throughout this document:

- SCC means Surrey County Council
- Council means Surrey County Council
- Parent(s) means a parent or legal guardian
- Provider(s) means any group, organisation, school or childminder providing registered childcare and “**Service Provider**” shall have the same meaning.
- Provider Agreement means this agreement
- EYFS means Early Years Foundation Stage
- Early Years Funded Entitlement means the 15 and 30 hour entitlement
- FEE means Funded Early Education (for three and four-year-olds)
- FEET means Funded Early Education for two-year-olds available to eligible parents
- Universal hours means the first 15 hours of funded early education available to all parents
- Extended hours means the second 15 hours of funded early education available to eligible parents

1.2 This Provider Agreement is based on the [DfE Model Agreement: Early years provision free of charge and funded childcare](#). Early years Providers must comply with the provisions of this Provider Agreement if they are funded by SCC to provide the Early Years Funded Entitlement for two, three and four-year-olds.

1.3 This Provider Agreement applies to the 15 hour entitlement for the most disadvantaged two-year-olds (known in Surrey as FEET), the 15 hour entitlement for Parents of three and four-year-olds (the universal entitlement) and the 30 hours entitlement for eligible parents of three and four-year-olds (the extended entitlement).

1.4 The following frameworks and legislation underpin this agreement:

- [Early Education and Childcare Statutory guidance for Local Authorities 2018](#)
- [Early Years Entitlements: local authority funding of providers operational guidance 2018-2019](#)
- [Childcare Act 2006](#)
- [Childcare Act 2016](#)
- [Equality Act 2010](#)
- [School Admissions Code 2014](#)
- [Statutory framework for the Early Years Foundation Stage \(EYFS\) 2017](#)
- [Local Authority \(Duty to Secure Early Years Provision Free of Charge\) Regulations 2014](#)
- [The Childcare \(Early Years Provision Free of Charge\) \(Extended Entitlement\) Regulations 2016](#)
- [Special Educational Needs and Disability \(SEND\) code of practice 0 to 25 years 2015](#)
- [General Data Protection Regulation \(GDPR\) 2018](#)

This Provider Agreement is not intended to replace, supersede or negate the requirements or expectations set out in legislation, other published statutory guidance and government advice, which may be amended from time to time, without express change in this Provider Agreement.

1.5 This agreement does not provide guidance on how Providers operate their private businesses, including charges for provision over and above a child’s funded hours. SCC 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 child’s funded place.

1.6 Providers offering the funded entitlement must sign the Provider Agreement. In doing so, Providers confirm that they will be offering the funded entitlement in accordance with this Provider Agreement. Signature will

be via the Early Education Portal or, for schools that do not have access to the Early Education Portal, a paper copy of the Provider Agreement.

1.7 This model agreement will be kept under review and updated as necessary.

This Provider Agreement is for:

- a) SCC
- b) Early years providers who are referred to as Providers and include:
  - private, voluntary and independent early years providers and childminders registered on the Ofsted Early Years Register
  - childminders registered with a childminder agency that is registered with Ofsted
  - schools, nurseries or classes funded by SCC
  - independent schools, academies and funded schools taking children age two and over and which are exempt from registration with Ofsted as an early years Provider.

1.8 SCC cannot impose requirements which subject the early years provision, or services provided by the childminder agency, to a quality assessment process by SCC. Providers are not required to attend any training or other quality improvement programme, other than any training or quality improvement programme identified in an early years provision Ofsted inspection report where the provider has been judged less than 'good' by Ofsted.

## 2 Key responsibilities

### 2.1 Key local authority responsibilities:

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

### 2.2 Key provider responsibilities:

- The Provider must comply with all relevant legislation and insurance requirements specified.
- The Provider should deliver the funded entitlements consistently to all Parents, whether in receipt of 15 or 30 hours and regardless of whether they opt to pay for optional services or consumables. This means that the Provider should be clear and communicate to Parents details about the days and times that they offer funded places, along with their services and charges. Those children accessing the funded entitlements should receive the same quality and access to provision.
- The Provider must follow the EYFS and have clear safeguarding policies and procedures in place that link to the [Surrey Safeguarding Children's Partnership \(SSCP\) Procedures Manual](#) for recognising, responding, reporting and recording suspected or actual abuse.
- The Provider must have arrangements in place to support children with special educational needs and/or disabilities (SEND). These arrangements should include a clear approach to identifying and responding to SEND. Providers should utilise the Early Intervention Funding to deliver effective support, whilst making information available about their SEND offer to Parents.
- The Provider should identify children who qualify for Early Years Pupil Premium and promote this offer to Parents.

## 3 Safeguarding

- 3.1 SCC has overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area. In Surrey we work to the Surrey Safeguarding Children's Partnership (SSCP) Procedures ([www.surreyscp.org.uk](http://www.surreyscp.org.uk)) which include a number of statutory functions under the 1989 and 2004 Children Acts, Childcare Act 2006, Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 ("the 2018 regulations"), Working Together to Safeguard Children 2018 guidance and Keeping Children Safe in Education 2019 legislation.
- 3.2 The Provider must follow the EYFS and have clear safeguarding policies and procedures in place that are in line with local guidance and procedures for responding to and reporting suspected or actual abuse and neglect. A lead practitioner must take responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect. The Provider must have regard to Working Together to Safeguard Children 2018.
- 3.3 In line with the settings safeguarding children policy and procedures, if an allegation is made against the owner, manager or any other employee/volunteer of the setting (including office/kitchen/cleaning staff) whether paid or unpaid, FEE/FEET funding may be withdrawn by SCC. This is dependent on the outcome of the investigation into the allegation, and whether the setting has breached the conditions of the Provider Agreement. The setting must comply with the advice of the Local Authority Designated Officer (LADO) and any compliance and welfare notices issued by Ofsted and inform the SCC Education Safeguarding team, of any action taken to safeguard the children in their care.
- 3.4 If the Provider fails to comply, the process for termination and withdrawal of funding will be followed.

## 4 Eligibility

- 4.1 The Provider must check original copies of documentation (birth certificate or passport) to confirm a child has reached the eligible age on initial registration for all funded entitlements. A record of the date and the member of staff who has checked the documentation should be made on the SCC Declaration Form.
- 4.2 The Provider must ensure that parents complete the SCC Declaration Form each funded period and fill in their address and postcode. In the first funded period of attendance parents must also confirm that the name of the child is their **full legal name** (as stated on the birth certificate or valid passport). The Provider should not complete any of the information requested on the front page of the SCC Declaration Form.
- 4.3 Where a child's name has been legally changed the Provider should see evidence of this before editing the child's record on the portal or updating SIMS (for schools).
- 4.4 If you make a claim for funding for a child whose date of birth has not been recorded correctly, SCC may reclaim the funding paid for periods when the child was not eligible for the funded entitlement.
- 4.5 **Eligibility for funded early education for two, three and four-year-olds**
  - 4.5.1 Three-year-olds (and two-year-olds who meet the eligibility criteria below) are entitled to 15 universal hours of funding from the start of the term beginning on or following the date set out below (these dates are consistent with those used for determining the start of compulsory education):
    - Children born in the period 1 January to 31 March: 1 April following the child's third birthday, or second birthday, as applicable
    - Children born in the period 1 April to 31 August: 1 September following the child's third birthday, or second birthday, as applicable

- Children born in the period 1 September to 31 December: 1 January following the child's third birthday, or second birthday, as applicable
- All three and four-year-olds are eligible for 15 universal hours of funded childcare until they reach statutory school age, the funded period after the child's fifth birthday.

These dates are consistent with those used for determining the start of compulsory education.

4.5.2 The Provider should offer places to eligible two-year-olds on the understanding that the child remains eligible until they qualify for the universal entitlement for three and four-year-olds.

4.5.3 SCC must ensure that a child has a funded entitlement place no later than the beginning of the term following the child and the Parent meeting the eligibility criteria for the funded entitlements.

#### 4.6 Funded Early Education for Two Year Olds (FEET)

4.6.1 Two-year-olds are eligible for 15 hours of funded early years provision (FEET) if the family receives one of the following benefits:

- Income Support
- Income based Jobseeker's Allowance (JSA)
- Income related Employment and Support Allowance (ESA)
- Support through Part 6 of the Immigration and Asylum Act 1999
- The Guaranteed element of State Pension Credit
- Child Tax Credit and have an annual income under £16,190 before tax
- Working Tax Credit and have an annual income under £16,190 before tax
- Working Tax Credit 'run-on' – the payment someone may receive for a further four weeks after they stop qualifying for Working Tax Credit
- Universal Credit and have an annual net earned income not over £15,400.

**Or**

If their child is in one of the groups listed below:

- child looked after by SCC
- child who has been adopted or has left care through either a special guardianship or child arrangements order
- child with a statement of special educational needs (SEN) or an Education, Health and Care Plan (EHCP)
- child getting Disability Living Allowance (DLA).

**Or**

If the Parent or carer is a non-EEA citizen who cannot claim benefits but is getting support under the Immigration and Asylum Act and have either:

- claimed asylum in the UK and are waiting a decision (known as 'part 6')
- been refused asylum in the UK (known as 'section 4').

If a Parent or carer's household income is £15,400 a year or less after tax, and they have either:

- leave to remain with 'no recourse to public funds' on family or private life grounds
- the right to live in the UK because they are a Parent or carer of a British citizen (known as a 'Zambrano Carer').

4.6.2 The Department for Education's eligibility checking system provides a mechanism for local authorities to verify whether children meet the qualifying criteria for FEET.

4.6.3 When making the first claim for a FEET funded child you can only claim from the date the application for FEET was received and agreed by the Funded Early Education Team. If the child is already attending the early years setting prior to the Parent receiving their eligibility letter, the payment to the Provider will not be backdated by SCC. Providers must make it clear to parents that they are liable for any fees until the start date on their eligibility letter.

4.6.4 Once a child has been agreed for FEET they will be funded even if the family does not meet the criteria at a later date.

4.6.5 Children moving from FEET to FEE should be able to continue to access the same hours, terms and conditions they were accessing under FEET if they request to do so.

#### 4.7 30 Hours Eligibility (Extended hours funding)

4.7.1 Parents must check eligibility for 30 Hours Funded Childcare at the government's website Childcare Choices [www.childcarechoices.gov.uk](http://www.childcarechoices.gov.uk).

A child will be entitled to the extended hours from the funded period after both of the following conditions are satisfied:

- the child has reached the age of three years
- the child's Parent has received confirmation from HMRC that they are eligible for the entitlement.

4.7.2 If a Parent has a child who will be three before the next funded period but forgets to apply, they will have to wait until the **start of the following** funded period to claim their extended hours.

4.7.3 Parents who are eligible for the extended hours will have an eligibility code which they must present to their provider for checking before being offered the extended hours.

4.7.4 Codes are 11 digits long and will start with either 11 (temporary codes) or 5000. If a parent made an application by phone, they will need contact the HMRC Helpline on 0300 123 4097 to re-confirm eligibility. All Parents must reconfirm their details through their Childcare Account or the Helpline at regular intervals, in most cases every three months.

You can find out more about [providing 30 hours funded childcare](http://www.surreycc.gov.uk/fundedearlyeducation) on our web page available via [www.surreycc.gov.uk/fundedearlyeducation](http://www.surreycc.gov.uk/fundedearlyeducation).

4.7.5 When checking eligibility for 30 hours funded childcare, alongside the 30 hours eligibility code, which is the child's unique 11-digit number, the Provider must acquire written consent from, or on behalf of, the Parent to be able to receive confirmation and future notifications from SCC of the validity of the parent's 30 hours eligibility code. This consent is contained within the SCC Declaration Form 2020-21.

4.7.6 Once a Provider has received written consent from the Parent, they must verify the 30 hours

eligibility code with SCC using the standalone eligibility checker within the Early Education Portal before offering a 30 hour place to the parent. Maintained schools that claim funding through schools finance will need to complete the SCC Eligibility Form for Schools, scan it and send electronically using Egress to the Funded Early Education Team, at [fundedearlyeducation@surreycc.gov.uk](mailto:fundedearlyeducation@surreycc.gov.uk)

- 4.7.7 SCC will confirm the validity of 30 hours eligibility codes to allow Providers to offer 30 hours places for eligible three- and four-year-olds.
- 4.7.8 Thereafter, SCC will complete audit checks to review the validity of eligibility codes for children who qualify for 30 hours funded childcare either each day that the child is within their grace period, if registered in the Early Education Portal, or a minimum of 6 fixed points in the year, both at half-term and at the end of term across the year (in line with the dates as listed at table A below). It is SCC’s responsibility to notify a Provider where a Parent has fallen out of eligibility and inform them of the grace period end date.

**Table A:**

<b>Date parent receives ineligible decision on reconfirmation:</b>	<b>SCC audit date:</b>	<b>Grace period end date:</b>
1 January – 10 February	11 February	31 March
11 February – 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	4 January	31 March

## 5 The grace period

- 5.1 A child will enter the grace period when the child’s parents cease to meet the eligibility criteria set out in [The Childcare \(Early Years Provision Free of Charge\) \(Extended Entitlement\) Regulations 2016](#), as determined by HMRC or a First Tier Tribunal in the case of an appeal.
- 5.2 SCC will be able to access information about whether a child has ceased to meet the eligibility criteria and entered the grace period via the Eligibility Checking System. The grace period end date will automatically be applied to eligibility codes.
- 5.3 SCC should continue to fund a place for a child who enters the grace period as set out in the [Early Education and Childcare Statutory guidance for Local Authorities 2018](#)
- 5.4 SCC will notify a provider where a Parent has fallen out of eligibility and inform them of the grace period end date, following the audit checks as set out in Table A.
- 5.5 If a Parent does not reconfirm or falls out of eligibility at the end of the grace period, their universal hour’s pattern should remain the same unless otherwise stated in your admissions policy.

## 6 Flexibility

- 6.1 Providers should offer parents their funded entitlement:
- Up to 15 or 30\* hours a week for 38 weeks a year which equates to 570 or 1140\* hours a year if stretched and offered all year round.
- \* (for three and four-year-olds eligible for 30 hours extended entitlement).



6.2 SCC encourages providers to offer flexible packages of funded entitlement, subject to the following:

- No session to be longer than 10 hours
- No minimum session length (subject to requirements of registration on the Ofsted Early Years Register)
- Not before 6am or after 8pm
- A maximum of two sites in a single day

6.3 Providers should be aware that funded entitlement places can be delivered:

- For up to 52 weeks of the year
- Outside of maintained school term times
- At weekends

6.4 Providers should ensure that children are able to take up their funded hours in continuous blocks and avoid artificial breaks being created throughout the day, for example over the lunch period.

6.5 The Provider should work with SCC and share information about the times and periods at which they are able to offer funded hours to support SCC to secure sufficient stretched and flexible places to meet parental demand in Surrey. The Provider should also publish their admissions criteria and ensure clear and transparent information about their offer and admissions criteria is available to parents at the point the child first accesses provision at their setting (through publicity materials, website).

6.6 Providers can define the maximum number of funded hours that they will offer in a session or day, but this information must be made clear to parents within the provider's charging policy and website where applicable.

6.7 Parents must be asked to sign confirming that they have read and understood the arrangements. Not all providers will be able to offer fully flexible places, but providers should work with parents to ensure that as far as possible the pattern of hours is convenient for parents' working hours.

6.8 Providers should give parents and carers a reasonable notice period where a change in timings of sessions or patterns of attendance is required. For example, if a nursery has changed ownership and the model of delivery of funded hours has been changed for pre-existing families.

6.9 Parents may choose to access their funded entitlement at more than one provider or on more than one site, but at no more than two sites in one day.

6.10 Parents must complete a SCC Declaration Form 2020 each funded period with every provider that they intend to take their funded hours with, giving them consent for the provider to claim the funding on the parent's behalf. Where the parent has not completed and signed the SCC Declaration Form 2020 upon commencement of taking their funded place at a provider, SCC reserves the right to reclaim funding paid for said child.

6.11 The SCC Declaration will be utilised as evidence in assessing where a possible duplicate, fraudulent or an over claim has been made. Parents and carers should be made aware of the implications of submitting duplicate claims, fraudulent claims and over claiming funded hours as part of your charging policy.

# 7 Partnership working

Partnerships will be supported by SCC between:

- SCC and providers i.e.: maintained nurseries & schools, Early Years PVI Providers and childminders
- Providers working with other Providers,
- Providers and Parents, carers
- SCC and Parents, carers

SCC promotes partnership working between different types of providers to offer flexible provision.

7.1 The Provider should work in partnership with parents, carers and other providers to improve provision and outcomes for children in their setting. An interactive toolkit has been developed by the Family and Childcare Trust, to help providers; set up or join a partnership, tackle the challenges joint working can bring and explore different ways of responding to the extended funded entitlement through a partnership approach and maximise the benefits of working together. You can find out further information at: [www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-toolkit](http://www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-toolkit)

The Provider should discuss and work closely with parents, carers, to agree how a child's overall needs will be met in practice when their funded entitlement is split across different providers, such as at a maintained school and childminder.

## 7.2 Attending more than one Provider

7.2.1 Attending term time settings only:

- A child can attend just term-time settings, but the total claim must not be more than 15 hours or 30 hours a week (if eligible for the extended entitlement). If the child attends through the holidays, the maximum number of hours each week will be less.
- Parents, carers, must make it clear on the Declaration Form before the beginning of each funded period where they want to claim the funded hours. Priority will be given to the setting who submits their information first.

7.2.2 Child attending stretched and term time providers:

- Where the stretched funding Provider submits their claim first, only the weekly stretched hours balance will be available for the term time setting to claim.
- Where the term time only Provider submits their claim first, there will only be a balance of hours for the stretched funding Provider to claim, which means that the hours may "run out" before the end of the funded period. The Provider will need to charge the parent, carer, for any hours that are not funded.
- It might be helpful for both settings to agree to work with the Funded Early Education Team to maximise funding for each provider.
- A Parent, carer, may choose to pay for all of their child's care at your setting if they are using all of their funded hours at another setting.
- If a child goes to both your setting and a maintained nursery class or school, you will only be able to claim for the funded hours that the parent, carer is not using at the maintained nursery class or school.

### For example:

- If a child with a universal 15 hour offer goes to a maintained nursery class for three hours every morning and your setting for two afternoons a week, all the universal funding will go to the school. You will have to charge the parent for the hours attended at your setting.
- If a child with an extended 30 hour offer goes to a maintained nursery class for 15 hours a week and your setting for 25 hours a week, we will be able to fund you for 15 hours and the school will also get funding for 15 hours. You will charge the Parent, carer, for the additional 10 hours.
- When a child is accessing their Funded Entitlement at more than one Provider, they should work in partnership with other Providers and parents, carers, to ensure continuity of care and effective transitional arrangements. This will support the child's learning, development and well-being (for example, sharing child development records, the two year progress check and details of hours attending).

## 8 Special educational needs and disabilities

- 8.1 SCC strategically plans support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in the local area in line with the graduated response outlined in the [Special Educational Needs and Disability \(SEND\) code of practice 0 to 25 years 2015](#).
- 8.2 SCC must be clear and transparent about the support on offer in their area, through their Local Offer <https://www.surreylocaloffer.org.uk/kb5/surrey/localoffer/home.page>, so parents, carers and Providers can access that support.
- 8.3 The registered person must ensure all staff members are aware of their duties in relation to the [SEND Code of Practice](#) and the [Equality Act 2010](#). All Providers must have arrangements in place to identify and support children with SEND.
- 8.4 All Providers must identify a Special Educational Needs Co-Ordinator (SENCO). The SENCO has a key role in supporting colleagues and coordinating the responses of the setting to meet the individual needs of children with SEND.
- 8.5 The Provider should 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.
- 8.6 Every Provider will expect to have some children with additional needs at some time. With careful planning and organisation most of these children are able to participate fully in the activities you offer. It is expected that providers will make 'reasonable adjustments' and make their offer inclusive to all children and families.
- 8.7 Children with SEND may meet the eligibility criteria for the 30 hour entitlement just like all other three and four-year-olds.

### 8.8 Early Intervention Funding

- 8.8.1 This fund may be available for funded three and four-year-olds (not in a reception class), and in exceptional circumstances, funded two-year-olds. This fund is for children with Special Educational Needs or Disabilities (SEND) as part of the Surrey Graduated Response to ensure that all children can access their entitlement.
- 8.8.2 The funding will (depending on the individual needs of the child/children) be available for up to

the full 30 hours extended entitlement. Providers will be expected to apply to the fund. You can also get support and advice from the Graduated Response Early Years SEND Team.

## 8.9 The Disability Access Fund

- 8.9.1 This fund is available to support three and four-year-olds in receipt of Disability Living Allowance to take up their funding at your setting. This is a one-off annual payment which is available to providers even if the child attends for fewer than 570 hours a year. Providers will be expected to apply for this funding, with parental agreement. (go to [www.surreycc.gov.uk/fundedearyeducation](http://www.surreycc.gov.uk/fundedearyeducation) and click on Providing funded early education for three and four-year-olds)
- 8.9.2 If a child changes their setting during the financial year, the Disability Access Fund will remain with the original setting.
- 8.9.3 If the child attends more than one Provider then the Parent allocates the funding to one of them. The funding cannot be shared across Providers.

# 9 Social mobility and disadvantage

SCC promotes equality and inclusion (particularly for disadvantaged families, children who are looked after and children in need) by removing barriers that prevent access to funded places and working with parents to give each child support to fulfil their potential.

## 9.1 Early Years Pupil Premium

- 9.1.1 Early Years Pupil Premium is additional funding for early years settings to improve the education they provide for disadvantaged three and four-year-olds. All Providers delivering funded early education places will be eligible to receive the Early Years Pupil Premium.
- 9.1.2 Providers should ensure that they promote the Early Years Pupil Premium to all parents and carers in the setting and identify eligible children, including those eligible because they are looked after or have left the care of SCC through adoption or special guardianship. This should be a voluntary disclosure – some Parents will choose not to identify themselves as meeting the eligibility criteria.
- 9.1.3 You can find more information about [Early Years Pupil Premium](#) on our website via [Surrey County Council - Childcare professionals](#) (through the Funding section), including how parents can apply, eligibility criteria and a section for how schools can claim the EYPP.

## 9.2 Deprivation Funding

- 9.2.1 Providers funded by SCC for FEE are entitled to an additional hourly supplement for children eligible for the Early Years Pupil Premium through economic criteria. Where an application has been made for Early Years Pupil Premium based on economic criteria and this application has been approved by the Funded Early Education Team, the deprivation supplement is automatically applied to the child's funded hours.
- 9.2.2 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. They will also use EYPP and any other locally available funding streams or support to improve outcomes for this group. Setting will identify any gaps in children's learning and development and plan ways of spending the EYPP and deprivation funding to address these gaps and improve children's outcomes.

### 9.3 Early Years Foundation Stage (EYFS) Progress check at aged two

The EYFS progress check at aged two supports early identification and intervention and Providers must make sure that they complete the EYFS progress check at aged two for all children aged between two and three in accordance with the Statutory Framework for the EYFS 2017.

## 10 Quality

### 10.1 Why does quality matter?

“Evidence shows that higher quality provision has greater developmental benefits for children, particularly for the most disadvantaged children leading to better outcomes. The evidence also shows that high quality early education at age two brings benefits to children’s development.” [DfE Early Education and Childcare Statutory guidance](#).

### 10.2 What must providers do?

- 10.2.1 Comply with the Statutory Framework for the EYFS 2017
- 10.2.2 Complete the EYFS Profile and take part in the moderation process led by SCC where appropriate
- 10.2.3 Comply with other legal obligations including (but not restricted to), Employment Law, Anti-discriminatory legislation, Health and Safety legislation and Data Collection Regulations.
- 10.2.4 Have a Designated Safeguarding Lead (DSL) or deputy DSL on duty at each setting who has attended a child protection course and follow the regulations and procedures of the [Surrey Safeguarding Children's Partnership](#). We expect that this person will have been on the ‘Working together to Safeguard Children’ and ‘Surrey Safeguarding Modules 1 and 2’. They will also update their knowledge every two years by completing a refresher course and be committed to ensure that they keep up to date of relevant safeguarding topics.
- 10.2.5 Have a named Special Educational Needs and Disability Coordinator (SENCO) who works in the setting and will attend any relevant training, including SENCO, network meetings.

### 10.3 Early Years Foundation Stage

- 10.3.1 The EYFS statutory framework is mandatory for all schools that provide early years provision and Ofsted registered early years providers in England. The EYFS sets the standards that all early years’ Providers must meet to ensure that children learn and develop well and are kept healthy and safe.
- 10.3.2 Ofsted are the sole arbiter of quality for all funded entitlements and Ofsted inspectorates of independent schools have regard to the EYFS in carrying out inspections and report on the quality and standards of provision.

### 10.4 Ofsted judgement Good or Outstanding

SCC will fund places for two, three and four year old children at any provider judged ‘good’ or ‘outstanding’ by Ofsted or at any childminder registered with a childminder agency judged ‘effective’ by Ofsted, as long as a parent wants their child to take up their funded place at that Provider and the provider is willing to accept SCC’s funding requirements as set out in this agreement.

### 10.5 Ofsted judgement of Requires Improvement

- 10.5.1 SCC will only fund places for two-year-old children in ‘requires improvement’ providers, where

there is not sufficient, accessible, 'good' or 'outstanding' provision.

- 10.5.2 SCC will fund places for three and four year old children at any Provider judged 'requires improvement' by Ofsted or at any childminder registered with a childminder agency judged 'effective' by Ofsted if a parent wants their child to take up their funded place at that provider and the Provider is willing to accept the local authority funding and any other local authority requirements.
- 10.6 Newly registered providers**  
SCC will fund places for two, three and four-year-old children at new providers registered with Ofsted until the Provider's first full Ofsted inspection judgement is published or at a childminder registered with an agency until the agency's first full Ofsted inspection judgement, if a parent wants their child to take up their funded place at that provider and the Provider is willing to accept SCC's funding requirements as set out in this agreement. Following publication of their Ofsted inspection judgement, the conditions in the above paragraphs will apply.
- 10.7 Ofsted judgement "met" or "not met"**  
SCC will fund Providers with an Ofsted inspection judgement of 'met' until their Ofsted quality inspection judgement, if a Parent wants their child to take up their funded place at that Provider and the Provider is willing to accept SCC's funding requirements as set out in this agreement. SCC will not fund Providers with an Ofsted inspection judgement of 'not met'.
- 10.8 Exemptions from the EYFS**  
SCC will fund Providers with exemptions from the EYFS if a Parent wants their child to take up their funded place at an exempt Provider and the Provider is willing to accept SCC's funding requirements as set out in this agreement.  
SCC will fund individual children who have exemptions from the EYFS.
- 10.9 SCC will rely solely on the Ofsted inspection judgement of the Provider or the childminder agency as the benchmark of quality.
- 10.10 SCC will not fund Providers who do not actively promote fundamental British values or if they promote views or theories as fact which are contrary to established scientific or historical evidence and explanations.
- 10.11 Ofsted judgement Inadequate**
- 10.11.1 SCC will secure alternative provision and withdraw funding from a Provider (other than a local authority maintained school), as soon as is practicable, when Ofsted publish an inspection judgement of 'inadequate' or an inspection judgement of a childminder agency of 'not effective'. It is for local authorities to determine an appropriate timeframe for withdrawing funding. When withdrawing funding SCC will take into account the continuity of care for children who are already receiving their funded hours at a Provider or with an agency registered childminder and Ofsted monitoring information about the provider or agency. Once funding is withdrawn, providers are not able to offer entitlement funding again until they have had an Ofsted inspection judgement which is not inadequate.
- 10.11.2 Once notification is received from Ofsted or the Provider of an inspection outcome of inadequate, the Provider will be advised not to offer a funded place to any additional children until after the formal process to withdraw funding is complete. This is to ensure that new children do not go through a settling in procedure to be then moved when funding is withdrawn.
- 10.11.3 SCC will not withdraw funding from Providers or from childminders registered with an agency until the Provider's or childminder agency's Ofsted inspection judgement is published. Once the inspection report is published the provider will be invited to a panel meeting within a six week period. Surrey County Council reserves the right to extend this period in exceptional

circumstances. The purpose of the panel meeting is to set the timeframe in which funding is to be withdrawn. At the meeting, panel members will review evidence submitted by the provider and the SCC Educational Effectiveness Team and set a timeframe for withdrawing the provider from the Surrey Directory of Providers. Providers are notified of the panel's decision within two working days and confirmed by letter within 10 working days. The Provider has a right to appeal the panel's decision within 10 working days of receiving the letter. Please see appendix 1 - Procedure for withdrawal of funded early education from inadequate settings.

SCC will take appropriate action to improve the quality of provision at a local authority maintained school which has been judged by Ofsted to require significant improvement or has been placed in special measures.

- 10.11.4 SCC will not fund childminders registered with a childminder agency where the agency has indicated to SCC that the childminder is not of the appropriate quality unless it is necessary to do so to ensure sufficiency of accessible places. SCC will also consider any information provided by a childminder agency about the childminder registered with them and the childminder's premises.

## 10.12 Training

SCC is required to provide information, advice and training for the following providers:

- those registered on the Ofsted Early Years Register who are judged less than good by Ofsted in their most recent inspection report
- newly registered providers on the Ofsted Early years Register who have not yet had an inspection report published
- those on Part A (the compulsory part) of the Ofsted General Childcare Register who are assessed by Ofsted as not complying with requirements of registration or the requirements relating to their activities.

On the topics of:

- meeting the requirements of the EYFS and Ofsted Inspection Frameworks
- meeting the needs of children with special educational needs and disabilities; vulnerable and disadvantaged children
- Effective safeguarding and child protection.

# 11 Business planning

- 11.1 SCC will clearly set out the documentation that they need to receive from providers to support payment and delivery of funded entitlements. SCC will also set out the timetable which providers should follow when submitting their documentation, this includes setting out the importance of timely and accurate Census returns.
- 11.2 The Provider should ensure they submit timely and accurate information, including, but not limited to, Census data, Declaration Forms and invoices, as per the financial guidelines of SCC. Failure to do so will result in inaccurate, delayed or suspended funding.
- 11.3 Penalties for providing late or incomplete information leading to additional administration in the processing of funded entitlements will be reasonable and proportionate to the inconvenience or costs incurred as a result of the lateness or incomplete claim. Charges for this will be clearly communicated with providers.
- 11.4 SCC should not carry out audit regimes which are disproportionate or are unnecessarily burdensome to Providers.

- 11.5 The Provider should maintain accurate financial and non-financial records relating to funded entitlement places and should give SCC access on reasonable notice to all financial and non-financial records relating to funded entitlement places funded under the Provider Agreement, subject to confidentiality restrictions.
- 11.5.1 For any general advice and support relating to your childcare business please see the running your business section of our website at [www.surreycc.gov.uk/childcareprofessionals](http://www.surreycc.gov.uk/childcareprofessionals) or email the Early Years and Family Resilience Commissioning Team at [childcarebusinessadvice@surreycc.gov.uk](mailto:childcarebusinessadvice@surreycc.gov.uk)

## 12 Charging

- 12.1 Government funding is intended to cover the cost to deliver 15 or 30 hours a week of funded, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services.
- 12.2 The Provider cannot charge parents “top-up” fees for funded hours of childcare. The definition of a top-up fee is the difference between a provider’s usual fee and the funding they receive from SCC to deliver funded places. However, the provider can charge for meals and snacks as part of a funded entitlement place and they can also charge for consumables such as nappies or sun cream and for services such as trips and forest school. These charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the funded entitlements are responsible for setting their own policy on how to respond, ensuring that this is in line with the terms of this Provider Agreement, with options including waiving or reducing the cost of meals and snacks or allowing parents to supply their own meals.
- 12.3 The Provider should deliver the funded entitlements consistently so that all children accessing any of the funded entitlements will receive the same quality and access to provision, regardless of whether they choose to pay for optional hours, services, meals or consumables.
- 12.4 SCC will not intervene in regards to purchased additional hours of provision or additional services, providing that this does not affect the parent’s ability to take up their child’s funded place. The provider should be completely transparent about any additional charges, prior to the parent signing a Provider Agreement for a childcare place.
- 12.5 The Provider should publish their admissions criteria and ensure parents understand which hours/sessions can be taken as funded provision.
- 12.6 The Provider can charge parents a refundable deposit to secure their child’s funded place but must refund the deposit in full to parents once the child’s data has been submitted on the initial headcount. You must not charge parents in full in advance and then refund them once you have received your payment from us.
- 12.7 An administration or registration charge can only be made if a child takes up additional paid hours and the charge should be proportionate. If a parent is only accessing funded hours, then the charge must be voluntary and cannot be as a condition of taking up their child’s funded place.
- 12.8 The Provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific provider and invoices do not show a charge for the funded entitlement.

## 13 Offering Funded Entitlement

Funded Early Education for two-year-olds (FEET) is a government initiative that funds 15 hours of early education for two-year-old children who would benefit most from early access to childcare. Funded



Early Education (FEE) for three and four-year-olds enables all parents to access 15 or 30 hours of funded early education a week for their child.

Parents must make sure their chosen early years provider is registered with SCC and on the Directory of Providers to offer Funded Early Education for two, three and four-year-olds.

### **13.1 Which providers qualify to offer Funded Early Education for two, three and four-year-olds?**

- A childminder registered with Ofsted or a childminder registered with a childminding agency which is registered with Ofsted.
- Private, voluntary and independent providers registered either on the Ofsted Early Years Register as a childcare provider or with the Department for Education as an independent school.
- Nursery schools, nursery classes or units funded by the local education authority.
- Academies.
- Funded schools.

### **13.2 To qualify to provide FEET, your setting needs to:**

- have received an outstanding or good Ofsted outcome
- be a new provider registered with Ofsted awaiting your first full Ofsted inspection judgement to be published
- have an Ofsted inspection judgement of 'met' until your Ofsted quality inspection judgement is published.
- Or, if you received a satisfactory or requires improvement outcome and are in a high priority area for FEET, we will consider your application on an individual basis. If you have received an inadequate Ofsted outcome you cannot offer Funded Early Education for Two Year Olds until you get an improved Ofsted outcome.

### **13.3 To qualify to provide FEE, your setting needs to:**

- have received an outstanding or good Ofsted outcome
- have received a requires improvement or you are registered with a childminder agency judged 'effective' by Ofsted and a parent wants their child to take up their funded place with you.
- be a new provider registered with Ofsted awaiting your first full Ofsted inspection judgement to be published
- have an Ofsted inspection judgement of 'met' until your Ofsted quality inspection judgement is published

If you have received an inadequate Ofsted outcome you cannot offer Funded Early Education for three and four-year-olds until you get an improved Ofsted outcome.

Children going to a non-maintained (independent) school are able to claim FEE funding from us until they are of statutory school age, which is the term after their fifth birthday.

### **13.4 Prospective providers for both FEET and FEE need to make sure that they:**

- are registered with Ofsted or with the Department for Education as an independent school
- are able to meet the requirements of the EYFS
- are able to meet the needs of all children, including those with additional needs, and/or disabilities, and will promote equality of opportunity

- have a named Special Educational Needs Co-Ordinator (SENCO) who works in the setting
- have a named designated child protection officer (Designated Safeguarding Lead - DSL) or a deputy DSL on duty at each setting (as required by the Surrey Safeguarding Children's Partnership)
- produce a Local Offer, outlining the provision they put in place for children with additional needs, as outlined in the SEN Code of Practice 2014. For more information contact your Early Years SEND Advisor.

13.5 An early years provider can apply to be registered for the 'Directory of Providers for 2, 3 and 4 year olds' at any time and registration can be completed within a short time scale provided the early years setting meets the quality criteria for FEET/FEE funding. We cannot backdate funding prior to registering on the 'Directory of Providers for 2, 3 and 4 year olds'.

13.6 We reserve the right to refuse an application and vary the criteria should the need arise. If we refuse your application, we will send you a letter explaining why and give you information about the appeal process. SCC will consider information published by Ofsted about a provider or childminder agency including the recent history about childcare provision by a particular provider or agency or childcare provision at a particular address. This may include, for example, where SCC has concerns that a provider judged "inadequate" by Ofsted may have re-registered their setting with Ofsted to avoid making the quality improvements identified by Ofsted. SCC will also consider history in relation to a provider who has closed and then applied to re-register with outstanding funded entitlement debt or who have previously been unable to produce claims documentation during audit.

13.7 All Providers must only make a claim for funding if they have a SCC Declaration Form signed and dated by the parent or carer in the same funded period as the claim. Claims can only be made for children who have attended their first funded session in the funding period.

Providers should also note the following:

- Providers must have completed the SCC Provider Agreement 2020-2021 in the Early Education Portal. Schools must return a signed paper version.
- PVI providers will use the Early Education Portal to claim funding for all eligible two, three & four-year-old children.
- Maintained schools must claim for all three and four-year-old children through schools finance and all claims for two-year-olds through the Early Education Portal.
- SCC Declaration Forms must be retained by the provider for a period of seven years.
- SCC will pay all providers according to the published payment schedule.
- The provider should accurately submit their claims in the Early Education Portal and any other necessary data by the published dates to support SCC to make payment.
- Claims must be made in the funded period in which the child takes up or uses their funded early education place. If a parent has given you the relevant forms on time but due to an administrative error the child has not been funded, you can contact the Funded Early Education Team, who may, in exceptional circumstances, add a late claim to the Early Education Portal for you. Please note late claims will only be accepted up to six weeks into the new funded period.
- SCC will not backdate claims if a SCC Provider Agreement was not completed in the Early Education Portal, or if for a school, a paper version, for the relevant funded period.
- SCC will set out in the SCC Provider Agreement the funding processes and timetable so providers are clear about the funding that they will receive and the requirements on them in order to receive it, including funding multiple providers and changes in provider.

# 14 Payments

If a provider has made a claim or has amended a claim for funding in the Early Education Portal by the last day of the month, they will be paid by the 15<sup>th</sup> of the following month (or nearest working day).

## 14.1 Estimate payments

### 14.1.1 Universal hours:

We will pay this to you automatically (unless you are a childminder or a new setting) by the end of the first week of the funded period. It will be approximately 60% of what you were paid for the same term last year. For example, your estimate payment for the Autumn funded period 2020 will be approximately 60% of what you were paid for the Autumn funded period 2019. If numbers last year were significantly higher or lower than the funded period for which you're claiming (which would mean an incorrect payment) then you should request an estimate claim form to enable us to make a more accurate payment. This can be requested from [fundedearlyeducation@surreycc.gov.uk](mailto:fundedearlyeducation@surreycc.gov.uk)

If you are a new setting you will need to contact the Funded Early Education Team for an Estimate Claim Form, as we will have no history on which to base the payment.

If you are a childminder or claiming FEET funding, you will always need to fill in an Estimate Claim Form if you would like an estimate payment. This is because the number of hours you claim tends to vary significantly. The forms are available to download at [www.surreycc.gov.uk/fundedearlyeducation](http://www.surreycc.gov.uk/fundedearlyeducation). Please make sure that you use the form for the correct funded period.

### 14.1.2 Extended hours:

For the current year you will need to complete a 30 hours Estimate Claim Form to apply for payments for the additional hours (over and above the Universal hours). We will pay 60% of the value of the hours indicated on your Estimate Claim Form.

### 14.1.3 How do I get a balance payment?

You will use the Early Education Portal to claim for the children. You must make sure that all data submitted to SCC is accurate. For all claims in the Early Education Portal by the end of the first month you will receive the balance (value of claims less the estimate payment) on the 15<sup>th</sup> of the following month (or nearest working day).

## 14.2 Making claims in the Early Education Portal for both funding options

### 14.2.1 Children for whom you are claiming for the first time:

Their parents will need to fill in a SCC Declaration Form. You should not fill in any of the child's details yourself. The form asks for details that the Department for Education need for statistical purposes. We use this information when assessing take up of certain family groups and for planning purposes. You need to be aware that you can only claim FEET or FEE once you have received a completed SCC Declaration Form. You will use the Early Education Portal to claim for your new children. Please refer to the user guide on the Early Education Portal for instructions on how to claim funding.

### 14.2.2 Children who were funded the term before, and still qualify:

These children will be on the Early Education Portal under Returning Children. Please refer to the user guide on the Early Education Portal for instructions on how to claim funding. You can

only claim funding for a returning child if you have a SCC Declaration Form for the new funded period.

If you do not have a SCC Declaration Form or the child has not attended at all in the current funding period, you cannot claim hours for them. For each child you will need to state whether or not they are returning. If they are returning, you will need to enter the pattern of hours that each parent has asked you to claim for their child and confirm that the child has actually returned to the setting. This means that this cannot be done in advance.

If a child has moved house please update their address details.

### 14.3 Declaration forms

- 14.3.1 All parents must complete a SCC Declaration Form each term. This is the Provider Agreement between yourself and the parent for the funding and contains all the required terms and conditions. It also discloses any other provider that the child is attending and reduces the risk of over-claims.
- 14.3.2 For the first SCC Declaration Form you will need to see the child's birth certificate or passport to prove they have a date of birth which qualifies the child for a funded early education place and to show the child's legal identity. You must record that you have seen and checked this documentation on the SCC Declaration Form.
- 14.3.3 You must ensure that parents fill in their address and postcode and that the name of the child is their **full legal name** (as stated on the birth certificate or valid passport). You should not complete any of the information requested on the front of the page except for the setting name and URN.
- 14.3.4 You will need to securely store the forms for seven years in case auditors want to see them. All forms should be stored locally.
- 14.3.5 You do not need to store photocopies of birth certificates or passports and you should not do so unless you can store them securely. Please record the child's details accurately - any errors cause delays in the administration and payment process.
- 14.3.6 You will need to give every parent a copy of the Privacy Notice. You must add details relating to your setting in the appropriate places. You can download the SCC Declaration Form and Privacy Notice from <https://www.surreycc.gov.uk/schools-and-learning/childcare-professionals/providing-free-early-education>.

**Please do not use your own versions of the forms.** You should use only the forms you've downloaded from [www.surreycc.gov.uk/fundedearlyeducation](http://www.surreycc.gov.uk/fundedearlyeducation).

If you are unable to claim FEET or FEE for a child because the parent has not completed the SCC Declaration Form, you may wish to charge the parent your full fees.

## 15 Compliance

- 15.1 SCC reserves the right to carry out checks and/or audits on sub-contractors to ensure compliance with the requirements of delivering the funded entitlements. Providers must retain all attendance and finance records for a period of seven years.

If an audit is carried out copies of the following documents for the relevant time period must be made available:

- SCC Declaration Forms (and SCC registration forms for funded periods prior to autumn 17)

- parental change of attendance forms
- children's attendance records
- samples of invoices/charges to parents, if applicable
- documentation to prove the status of the setting, for example registered charity, incorporated company, private owner
- information provided to parents relating to how funded entitlement can be accessed and any charges for additional time, services or consumables
- any other evidence that can reasonably be requested.

15.2 Providers must follow all planning guidance and have appropriate planning permission in place.

15.3 Providers must comply with all environmental health legislation.

15.4 Providers should give SCC and parents at least one month's notice in writing if they decide to stop offering the funded places.

15.5 If a setting closes part way through a funding period, SCC requires providers to pay back unused funding to enable children to access their funded entitlement elsewhere.

15.6 Failure to pay back SCC any monies owed within given deadlines will result in SCC implementing its corporate debt recovery policy.

## 16 Termination and withdrawal of funding (see appendix 1)

Suspension of registration by Ofsted or a breach of statutory requirements or safeguarding issues will result in the termination of the arrangement and withdrawal of funding.

16.1 SCC will withdraw providers from the Surrey 'Directory of Providers for 2, 3 and 4 year olds', other than in exceptional circumstances, if they, or the childminder agency they are registered with:

- Receive an inadequate Ofsted inspection judgement (see section 10 – Quality)
- Do not comply with the statutory framework for the EYFS 2017.
- Do not comply with legal requirements such as health and safety.
- Commit fraud or misappropriate funds or grants.
- Do not complete the Spring Early Years Census by the date given.
- Do not produce SCC Declaration forms for claims made within the Early Education Portal on request.
- Do not comply with the fundamental British values as set out in HM Government Prevent Strategy.

SCC reserves the right to act to terminate or withdraw funding even if this is not done immediately. Withdrawal from the 'Directory of Providers for 2, 3 and 4 year olds' means that a provider is not able to claim funding for eligible children.

## 17 Appeals process (see appendix 2)

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

17.2 Providers who wish to appeal should write to SCC, within 10 working days of receiving notification of

the Council’s decision to withdraw funding. They should outline the grounds for appeal linked to the termination list above and give reason why they believe that they are meeting the full terms of compliance. This will then be reviewed by senior managers in line with the full appeals procedure.

17.3 The appeals procedure for withdrawal of funded early education from inadequate settings can be found in appendix 2.

## 18 Complaints process

18.1 The Provider should ensure they have a complaints procedure in place that is published and accessible for parents who are not satisfied their child has received their funded entitlement in the correct way, as set out in this Provider Agreement and in Early Education and Childcare Statutory Guidance for Local Authorities published by the Department for Education.

SCC expects that the majority of complaints will be resolved locally using the Providers own complaints procedure.

18.2 If a parent is not satisfied that their child has received the funding in accordance with the legislation or as set out in this agreement and in the Early Education and Childcare Statutory guidance for Local Authorities, and has not been able to resolve their concern directly with their provider, they should contact SCC at [fundedearlyeducation@surreycc.gov.uk](mailto:fundedearlyeducation@surreycc.gov.uk) SCC will investigate the parent’s complaint and will ask the provider to provide information regarding the complaint within a specified timescale.

18.3 If you have a concern or a complaint about how SCC are administrating the funding or about a member of the team please follow the SCC’s complaints procedure available online at <https://www.surreycc.gov.uk/council-and-democracy/contact-us/complaints-comments-and-compliments>

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

## 19 Data Protection

### 19.1 Definitions

“Data Controller”	has the meaning given to that term in the Data Protection Legislation in force from time to time;
“Data Processor”	has the meaning given to that term in the Data Protection Legislation in force from time to time;
"Data Protection Impact Assessment"	an assessment carried out pursuant to Article 35 of the General Data Protection Regulation;
“Data Protection Legislation”	the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 the General Data Protection Regulation and any legislation implemented in connection with the General Data Protection Regulation and any replacement legislation coming into effect from time to time 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;

"Data Security Breach"	any breach of security or confidentiality leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data;
"Data Subject"	has the meaning given to that term in the Data Protection Legislation in force from time to time;
"General Data Protection Regulation" or " <b>GDPR</b> "	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
"Information Commissioner's Office"	the office of the Information Commissioner, being the regulator appointed in the UK as the data protection supervisory authority;
"Personal Data"	has the meaning given to that term in the Data Protection Legislation in force from time to time;

## 19.2 Data Protection

- 19.2.1 Both Parties shall procure that its representatives shall, duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of this Provider Agreement.
- 19.2.2 The Service Provider shall perform its obligations under this Provider Agreement in such a way as to ensure that it does not cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 19.2.3 The Service Provider shall be liable for and shall indemnify (and keep indemnified) the Council against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Council which arise directly from a breach by the Service Provider of its obligations under the Data Protection Legislation, including without limitation those arising out of any third party demand, claim or action, or any breach of Provider Agreement, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Service Provider or its employees, servants, agents or sub-contractors. For the avoidance of doubt, the Council shall provide documentary evidence to the Service Provider before it can make a claim under this clause in relation to any third party action.
- 19.2.4 The Service Provider agrees that it shall enter into a data sharing agreement with the Council if required to do so at the Council's absolute discretion so as to set out the Parties obligations in relation to any Personal Data which may be shared between the Parties.
- 19.2.5 The provisions of this clause 19 shall apply during the continuance of the Provider Agreement and indefinitely after its expiry or termination.

## 19.3 Data Processor Obligations

- 19.3.1 With respect to the Parties' rights and obligations under this Provider Agreement, the Parties agree that the Council is the Data Controller and that the Service Provider is the Data Processor. A description of the Personal Data processed by the Service Provider and the processing activities undertaken by the Service Provider is set out in the Data Processing Activities set out in clause 19.20.
- 19.3.2 In respect of Personal Data that the Service Provider processes on behalf of the Council in

connection with this Provider Agreement, the Service Provider shall and shall procure that its representatives shall:

- 19.3.2.1 solely process the Personal Data for the purposes of fulfilling its obligations under this Provider Agreement and in compliance with the Council's written instructions as set out in this Provider Agreement and as may be specified from time to time in writing by the Council;
- 19.3.2.2 notify the Council immediately if any instructions of the Council relating to the processing of Personal Data are unlawful;
- 19.3.2.3 not transfer to or access any Personal Data from a country outside of the United Kingdom without the prior written consent of the Council;
- 19.3.2.4 comply with the Council's instructions in relation to transfers of Personal Data to a country outside of the United Kingdom unless the Service Provider is required pursuant to applicable laws to transfer Personal Data outside the United Kingdom, in which case the Service Provider shall inform the Council in writing of the relevant legal requirement before any such transfer occurs unless the relevant law prohibits such notification on important grounds of public interest;
- 19.3.2.5 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data and ensure that all Staff used by the Service Provider to process Personal Data are subject to legally binding obligations of confidentiality in relation to the Personal Data;
- 19.3.2.6 ensure that none of the Service Provider's Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;
- 19.3.2.7 not engage any sub-contractor to carry out any processing of Personal Data without the prior written consent of the Council provided that notwithstanding any such consent the Service Provider shall remain liable for compliance with all the requirements of this Provider Agreement including in relation to the processing of Personal Data;
- 19.3.2.8 ensure that obligations equivalent to the obligations set out in this clause 19 are included in all Provider Agreements between the Service Provider and permitted sub-contractor who will be processing Personal Data and who have been approved in accordance with clause;
- 19.3.2.9 take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Personal Data to be protected including without limitation, all such measures that may be required to ensure compliance with the Data Protection Legislation;
- 19.3.2.10 upon request provide a written description of the technical and organisational measures employed by the Service Provider (within the timescales required by the Council) and if the Council does not consider that such measures are adequate to enable compliance with the Data Protection Legislation, implement such additional measures as may be specified by the Council (acting reasonably) to ensure compliance;
- 19.3.2.11 taking into account the nature of the data processing activities undertaken by the Service Provider, provide, at no cost to the Council, all possible assistance and co-operation (including without limitation putting in place appropriate technical and organisational measures) to enable the Council to fulfil its obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation, including (without limitation):
  - 19.3.2.11.1 notifying the Council within two (2) Working Days, of receiving any request from a Data Subject exercising their rights under the Data Protection Legislation;



- 19.3.2.11.2 complying with the Council's instructions in relation to complying with the Data Subject's rights under the Data Protection Legislation, which may include (without limitation) providing notices to Data Subjects in a format specified by the Council, rectifying inaccurate Personal Data, ceasing or restricting processing of Personal Data, providing access to Personal Data, permanently deleting or securely destroying Personal Data and providing copies of Personal Data in a format specified by the Council;
- 19.4 maintain a record of the Service Provider's processing activities in accordance with the requirements of the Data Protection Legislation;
- 19.5 assist the Council, at no cost to the Council, in ensuring compliance with the obligations set out in Articles 32 to 36 (inclusive) of the GDPR (or any equivalent legislation in the UK or any subsequent legislation) taking into account the nature of the data processing undertaken by the Service Provider and the information available to the Service Provider, including (without limitation):
- 19.5.1 providing information and assistance upon request to enable the Council to notify Data Security Breaches to the Information Commissioner's and/or to affected individuals and/or to any other regulators to whom the Council is required to notify any Data Security Breaches; and
- 19.5.2 providing input into and carrying out Data Protection Impact Assessments in relation to the Service Provider's data processing activities;
- 19.6 ensure that it has in place appropriate technical and organisational measures to ensure that processing of Personal Data carried out by the Service Provider in connection with this Provider Agreement meets the requirements of the Data Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation;
- 19.7 notify the Council immediately and in any event within twenty-four (24) hours in writing if:
- 19.7.1 the Service Provider or any sub-contractor engaged by or on behalf of the Service Provider suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; or
- 19.7.2 the Service Provider or any sub-contractor engaged by or on behalf of the Service Provider receives any Data Security Breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation, and in each case the Service Provider shall provide full co-operation, information and assistance to the Council in relation to any such Data Security Breach, complaint, notice or communication at no cost to the Council;
- 19.8 upon termination of this Provider Agreement, at the discretion of and at no cost to the Council, delete securely or return all Personal Data to the Council and delete all existing copies of the Personal Data unless and to the extent that the Service Provider is required to retain copies of the Personal Data in accordance with applicable laws.
- 19.9 make available to the Council at no cost to the Council all information necessary to demonstrate compliance with the obligations set out in this clause and, upon request, allow the Council, the Information Commissioner's Office and its representatives access to the Service Provider's Premises, records and Personnel for the purposes of assessing the Service Provider's compliance with its obligations under clause; and
- 19.10 indemnify the Council from and against all costs, expenses (including legal and other professional fees and expenses), losses, damages and other liabilities or whatever nature (whether contractual, tortious or otherwise) suffered or incurred by the Council and arising out of or in connection with any breach by the Service Provider or any sub-contractor of this clause. For the avoidance of doubt, the Council shall provide documentary evidence to the Service Provider before it can make a claim under this clause in relation to any third party action.

19.11 The provisions of this clause shall apply during the continuance of the Provider Agreement and indefinitely after its expiry or termination.

**19.12 Council Data on Service Provider’s IT System(s)**

19.12.1 The Service Provider shall:

19.12.1.1 take all reasonable precautions and use all reasonable endeavours to preserve the integrity of any Council Data or other data which it stores and/or processes on behalf of the Council and to prevent any corruption or loss of such data and to have in place an appropriate archiving and back-up policy;

19.12.1.2 follow its detailed archiving procedures (as appropriate);

19.12.1.3 in the event of any corruption of or loss or damage to the Council Data, use all reasonable endeavours to restore the lost or damaged Council Data, at its own expense, from the latest back-up of such Council Data maintained by the Service Provider in accordance with the archiving procedure described in its archiving and back-up policy or, where the Council Data has not been restored by the Service Provider within ten (10) Working Days, at the Council’s option, promptly reimburse the Council for any reasonable expenses it incurs in having the Council Data restored by a third party;

19.12.1.4 be responsible for any loss, destruction, alteration or disclosure of Council Data caused by itself and any of its sub-contractor, including (but not limited to) any third Parties sub-contractor by the Service Provider to perform services related to Council Data maintenance and back-up; and

19.12.1.5 in providing the Services, have in place and comply with its privacy and security policy relating to the privacy and security of the Council Data, such policy to include measures equal to or broadly comparable with the relevant provisions of the Council’s Data in Transit Policy. The Service Provider shall provide a copy of its privacy and security policy to the Council upon request and wherever such policy is updated by the Service Provider from time to time and shall take into account any comments the Council has on such policy.

19.13 The Council has completed the table below and the Service Provider shall only process Personal Data in accordance with this clause 19:

<p>Category of Data</p>	<p>Name, age, DOB, Address, Family Composition, Medical Information, GP address, School, Education reports, Child Looked After placement history, Legal Status, Child Protection History, Behaviour, Interests and Strengths, Allegations/Complaints, Risk Assessments, Placement History.</p> <p>Equalities data will also be collected to monitor the new service against the protected characteristics, age, disability, race.</p>
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	<p>Key contacts information for Looked After Children</p> <p>At times Special Data such as Ethnic Origin and Health details may need to be shared.</p> <p>In some instances, sensitive data regarding safeguarding concerns may need to be shared.</p>
Category of Data Subject	Children and Young People and Parent/Carers
Processing Operations	<p>Initial referral data, including Name, Age, DOB, Address, Family Composition, Medical Information, GP address, School, Education reports, Child Looked After placement history, Legal Status, Child Protection History, Behaviour, Interests and Strengths, Allegations/Complaints, Risk Assessments, Placement History. Provider will hold data on Case Files (electronic and paper)</p> <p>Data shared as appropriate with other professionals</p> <p>Information may be shared over the telephone, via secure e-mail (Egress) and by letter.</p>
Location of Processing Operations	United Kingdom
Identity of sub-contractors	N/A
Purposes	Student data will need to be shared for Education, Health and Care Plans, for planning and placing in schools and colleges in future and in some instances to share with Health and Social Care departments.
Duration	

19.14 The Parties shall enter into a Data Processing Agreement

## 20 Safeguarding in Employment

- 20.1 The Service Provider shall maintain and keep up to date appropriate policies on child protection. These policies shall comply with any legislative and registration/regulatory requirements, Department of Health guidelines and also with policies, procedures and guidelines issued by the Council. The Service Provider shall ensure that these policies, procedures and guidelines are communicated to staff and that appropriate training is provided to staff in relation to them.
- 20.2 The Service Provider must have in place comprehensive procedures for reporting of and managing allegations against staff which demonstrates the promotion of the safety and welfare of children and are compliant with statutory requirements. The Service Provider must be able to evidence safe and robust recruitment procedures and practice for all staff working with children and/or adults at risk. The Service Provider shall ensure that staff know about and comply with the requirements to make accurate, factual and contemporaneous records to ensure compliance with this clause 20.2. The Service Provider shall comply with the Council Safeguarding procedures in relation to this clause 20.2 details of which are available using the following links and may be amended from time to time and notified to the Service Provider:
- [www.surreysab.org.uk/information-for-professionals/ssab-policies-and-procedures/](http://www.surreysab.org.uk/information-for-professionals/ssab-policies-and-procedures/)
- [surreyscb.procedures.org.uk/page/contents](http://surreyscb.procedures.org.uk/page/contents)
- 20.3 The Service Provider should fulfil its legal obligations in relation to carrying out Criminal Records Checks and checking Staff through the DBS or Disclosure Scotland (as appropriate) and the relevant national or local safeguarding authority, where necessary and appropriate and complete a risk assessment form in respect of each Staff member when making decisions in relation to convictions revealed by the Criminal Records Check.
- 20.4 The Service Provider is required to pay the full cost of any such registration and related costs. The Service Provider acknowledges that the Council has legal responsibilities under the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) ("SVG") and that the Service Provider must check the Protection of Children Act list and comply with all other relevant Law in relation to safeguarding children and shall provide such evidence of compliance with this clause as the Council shall reasonably require. If it is a requirement of the Provider Agreement for the staff member to be registered with the DBS Update Service, the Service Provider shall be responsible for ensuring that the staff member maintains their annual subscription of the DBS Update Service.
- 20.5 The Service Provider shall nominate and name a designated safeguarding lead and make arrangements during the provision of the Services under this Provider Agreement to ensure that it complies with the provisions of the SVG.
- 20.6 The designated senior officer or manager referred to in clause 20.5 above shall comply with the provisions of "Working together" for safeguarding children, in dealing with allegations of abuse made against the Service Provider's employees who work with children. The Service Provider shall have in place a safeguarding policy.
- 20.7 The Service Provider shall be entirely responsible for the employment and conditions of service of its staff and all obligations relating thereto. In addition to the pre-employment checks to be carried out under this clause, the Service Provider shall ensure that suitable references reflecting the staff member's suitability to work with children and/or vulnerable adults are taken up as part of the recruitment process. All staff members proposed for the Service shall be subject to an appropriate Criminal Records Check, which should be carried out and results obtained prior to the staff member being employed in connection with the Service. Should an adverse entry be revealed as a result of the Criminal Records Check and/or should any convictions including those that would otherwise be spent

under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 be revealed, the Service Provider shall notify the Council's Manager of these immediately. The Council shall have a right to veto the employment or engagement of any staff member proposed for the Service as a result of the adverse entry/convictions, but not unreasonably or vexatiously.

- 20.8 The Service Provider shall use one of the following methods for the advice, processing and storage of each Criminal Records Check:
- 20.8.1 by the Service Provider directly (if DBS registered); or
  - 20.8.2 through an external DBS umbrella body; or
  - 20.8.3 through the Council's DBS Umbrella Body.
- 20.9 The Service Provider shall comply with and observe all relevant Law in relation to Criminal Records Checks and follow all recommendations and general guidance issued including by any Central Government Department on Criminal Records Checks and carrying out Criminal Records Checks in relation to any person engaged in a role that meet the previous definition of Regulated Activity as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act Regulations, when deciding whether the outcome of the Criminal Records Check is satisfactory and whether the individual concerned is suitable to carry out the role in connection with the Services.
- 20.10 The Service Provider shall store the record of the disclosure securely within the Service Provider's organisation in accordance with the Data Protection Act 2018 and DBS Code of Practice.
- 20.11 If visits are taking place as part of the recruitment process, potential staff of the Service Provider must be accompanied by a member of staff at all times.
- 20.12 The Service Provider must have a robust system which evidences that when staff are suspended or dismissed and safeguarding children and/or vulnerable adults guidance including government guidance is followed and relevant professional bodies informed in the event of non-compliance. The Service Provider will ensure that it has appropriate procedures in place that support:
- 20.12.1 the immediate reporting to the Local Authority Designated Officer of concerns and details of any incidents and/or convictions in relation to staff members; and
  - 20.12.2 other action necessary to support the Council's policies, including the possible mandatory participation in child protection meetings and actions.
  - 20.12.3 The Service Provider shall have codes of conduct in place for all staff.
  - 20.12.4 The Service Provider must provide evidence of robust and effective complaints and whistle-blowing policies including a guarantee to staff (and Parents where applicable) that using these complaints and/or whistle blowing procedures appropriately will not prejudice their own position and prospects.
  - 20.12.5 If abuse of an individual is taking or has taken place or is suspected the Service Provider must comply with the "duty to refer" by immediately notifying the Council Manager as well as the Service Provider's representative and should consider suspension of the staff member(s) and take emergency measures (for example, inform police/seek medical assessment/treatment (as appropriate)). The Service Provider must, as far as is practicable, preserve any evidence but may not commence any investigation until authorised to do so by the Council Manager. The Service Provider must also notify the DBS and/or Disclosure Scotland (as appropriate) if a staff member is dismissed or removed from working in connection with the Services for the reasons described in the "Duty to Refer" section of the DBS website.

### 20.13 Requests for Information from the Disclosure and Barring Service (DBS)

- 20.13.1 The Council shall be entitled under its duty to the DBS to respond to requests from the DBS for further information already held by the Council in relation to the staff.
- 20.13.2 The Service Provider shall respond to requests from the Council within a reasonable time about Criminal Records Checks in relation to the staff and shall cooperate with the Council to enable the Council to comply with its duty to the DBS.
- 20.13.3 Failure by the Service Provider to comply with the safeguarding provisions of this clause 20.15 shall entitle the Council to terminate the Provider Agreement and claw back the early years entitlement funding.

## 21 General

- 21.1 No person who is not a Party to this Provider Agreement shall have any right to enforce any term of this Provider Agreement, which expressly or by implication, confers a benefit on him without the prior consent in writing of both Parties. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contract (Rights of Third Parties) Act 1999.
- 21.2 The Service Provider acknowledges that the Council is subject to the requirements under the Freedom of Information Act 2000 (the "Act") and the Environment Information Regulations 2004 (the "Regulations") and shall cooperate with the Council (at the Service Provider's expense) to enable the Council to comply with these information disclosure requirements
- 21.3 The Courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Provider Agreement.

## 22 Contact details

Funded Early Education Team

01372 833811

[fundedearlyeducation@surreycc.gov.uk](mailto:fundedearlyeducation@surreycc.gov.uk)

Commissioning Team Early Years & Family Resilience

[childcarebusinessadvice@surreycc.gov.uk](mailto:childcarebusinessadvice@surreycc.gov.uk)

Early Years Educational Effectiveness Team and Early Years SEND Team

[sectorNE@surreycc.gov.uk](mailto:sectorNE@surreycc.gov.uk)

[sectorSE@surreycc.gov.uk](mailto:sectorSE@surreycc.gov.uk)

[sectorSW@surreycc.gov.uk](mailto:sectorSW@surreycc.gov.uk)

[sectorNW@surreycc.gov.uk](mailto:sectorNW@surreycc.gov.uk)

Early Education Safeguarding Team

[earlyeducation.safeguarding@surreycc.gov.uk](mailto:earlyeducation.safeguarding@surreycc.gov.uk)

Local Authority Ombudsman

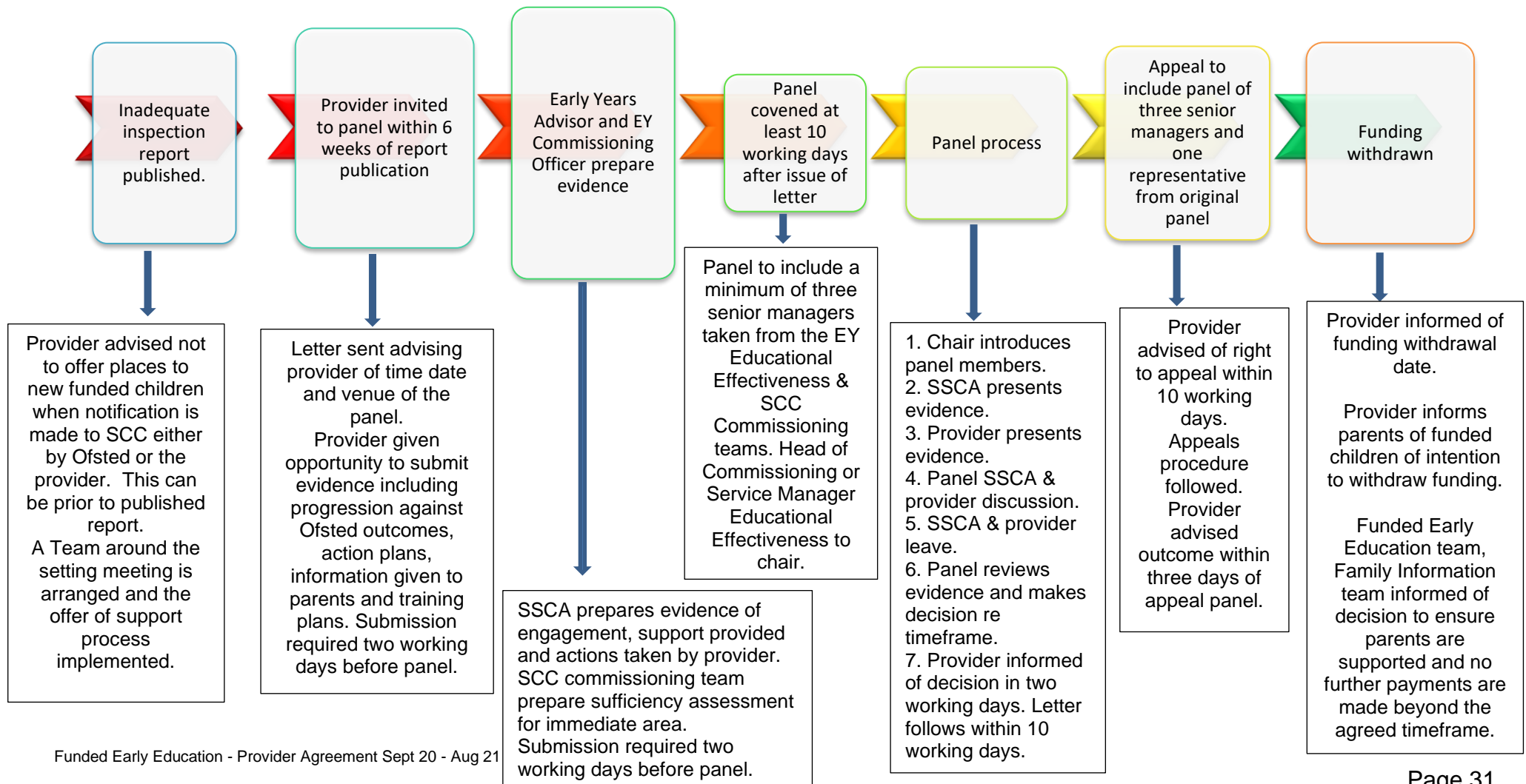
<https://www.lgo.org.uk/>

# Appendices

## Appendix 1 – Inadequate process flowchart

### Process and support for withdrawal of funded early education

The purpose of the panel is to set a timeframe to withdraw the provider from the Surrey Directory of Providers.



# Procedure for withdrawal of funded early education from inadequate settings

The purpose of this document is to describe how Surrey County Council will fulfil its statutory duty to withdrawal funding for early education from settings that are judged by Ofsted to be inadequate.

Our statutory responsibilities in this regard are clear, as set in Section A3.13 of the Early Education and childcare statutory guidance for local authorities. This states that local authorities should:

“Secure alternative provision and withdraw funding from a provider (other than a local authority maintained school), as soon as is practicable, when Ofsted publish an inspection judgement of the provider of ‘inadequate’ or an inspection judgement of a childminder agency of ‘not effective’. It is for local authorities to determine an appropriate timeframe for withdrawing funding. When withdrawing funding local authorities should take into account the continuity of care for children who are already receiving their funded hours at a provider or with an agency registered childminder and Ofsted monitoring information about the provider or agency.

Surrey County Council is committed to ensuring that children in Surrey are able to access the highest standards of early education and childcare provision. This means that we will take action to support settings when a judgement of inadequate is issued by Ofsted to a provider, but we will also withdraw funding in line with our statutory responsibilities.

When an Ofsted judgement of inadequate is received by a Surrey setting, the Educational Effectiveness Team and Early Years and Family Resilience Commissioning Team will write to a provider with an offer of support. Initially support will take the form of a team around the setting meeting. In this meeting a support plan will be developed to address the issues highlighted by Ofsted, which could include developing an action plan and implementing a Safeguarding and Welfare Requirements audit. This will depend upon the actions required by Ofsted.

The formal process to decide the timeframe to deregister the provider from the Surrey Directory of Providers and withdraw funded entitlement funding will begin after the Ofsted report is published. Please note that Surrey County Council does not waive its statutory responsibility to withdraw funding, as required by statutory guidance, if it does not act immediately or in line with the timeframes and process set out in this document.

## Process

Once notification is received by Surrey County Council from Ofsted or the provider, the provider will be advised against offering a place to any additional funded children until after the formal process to withdraw funding is complete. This is to ensure that new children do not have to go through a settling in procedure to be then moved once funding is withdrawn.

A panel to decide the timeframe in which to withdraw funding will be convened at least 10 working days after the provider is sent a letter inviting them to the panel meeting. The provider is given the opportunity, prior to the panel meeting to submit any evidence they wish to relate to areas such as:

- progress they feel they have made in responding to their Ofsted outcomes;



- action plans, including time frames, for addressing the issues in their Ofsted report; and
- training to support improvement.

The provider must also provide a copy of the information given to current and perspective parents regarding the inspection outcome. If no evidence is received to demonstrate that parents have been informed of the Ofsted inspection outcome, Surrey County Council will write directly to parents and carers claiming funded early education hours at the setting.

The Senior Supporting Children Advisor responsible for the area will also collate the following information to present at the panel:

- evidence of engagement by the provider;
- support provided by Surrey County Council; and
- action taken by the provider

A sufficiency assessment of funded childcare places within the immediate area of the setting will also be carried out by the Early Years and Family Resilience Commissioning Team for the panel to consider at the meeting.

The provider should confirm attendance at the panel and submit all evidence at least two working days before the panel date.

The panel will consist of a minimum of three senior managers from Early Years Educational Effectiveness Team, Early Years Commissioning Team and Graduated Response Early Years Team including either the Head of Commissioning or Service Manager for Educational Effectiveness who will chair the meeting. The panel will consider the evidence and make the decision as to the timeframe for withdrawal of funding.

There are three options for withdrawal of funding available to the panel as follows:

- Withdraw funding with immediate effect;
- Withdraw funding at the end of the current funded period (or the following half-term, should there be insufficient time to give parents due notice); or
- Withdraw funding following notification of the outcome of the next Ofsted inspection, should the setting receive a second inadequate.

The outcome of the panel will be conveyed to the provider within two working days and a formal letter sent to the provider within five working days. The provider should inform parents of the intention to withdraw funding and associated timescales.

The provider will have 10 working days from the issue of the letter to appeal the decision about the timescale for funding withdrawal. Please note that there is no option to appeal against the Local Authority's statutory duty to withdraw funding from inadequate settings. Any appeal should clearly set out the grounds for contesting the decision about when funding would be withdrawn and be made in writing to the Director of Commissioning at Surrey County Council.

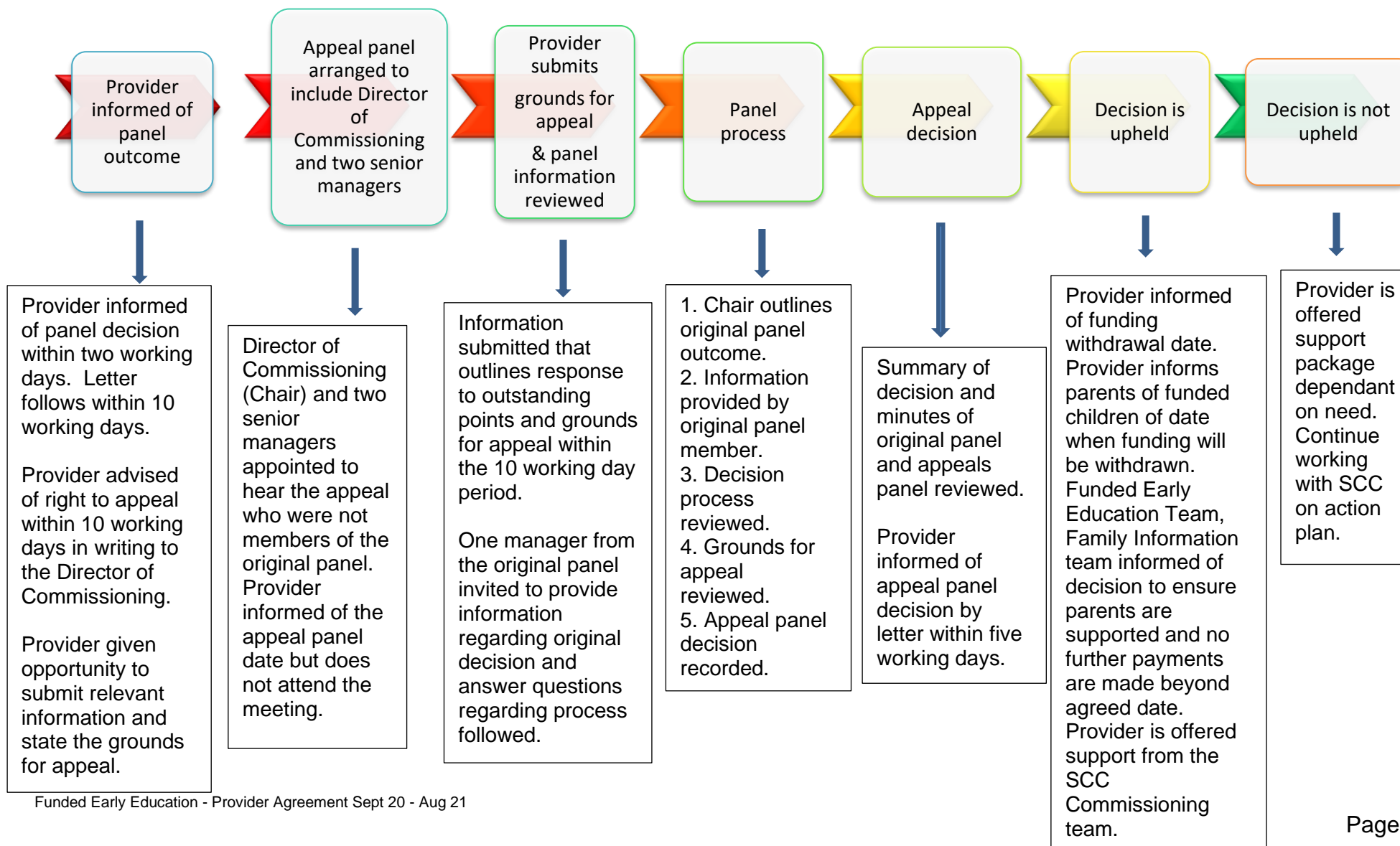
A panel to include the Director of Commissioning as Chair and two other senior managers will be convened. One member of the original panel will be present to explain the process followed and rationale behind the decision taken by the Withdrawal of Funding Panel. The appeal will be considered, and the provider will be notified of the appeals panel decision within three working days.

Should the provider choose not to appeal, or if the decision is upheld by the Appeal Panel, the provider must write to the parents of the children claiming their funded early education hours at the setting to advise them that funding is being withdrawn and the related timescales. If the provider receives an Ofsted inspection before the funding is withdrawn and the inspection outcome is no longer inadequate, then the provider will continue to receive funding and will remain on the Surrey Directory of Providers.

If an Ofsted inspection outcome of requires improvement or above is received after the funding has been withdrawn, the provider will need to re-register on the Surrey Directory of Providers following the standard process.

## Appendix 2 – Inadequate appeals process flowchart

### Process for appeal following withdrawal of funded early education



# Appeals procedure for withdrawal of funded early education from inadequate settings

It is a legal requirement under Section A3.13 of the “Early Education and Childcare Statutory Guidance for Local Authorities” that local authorities should:

“Secure alternative provision and withdraw funding from a provider (other than a local authority maintained school), as soon as is practicable, when Ofsted publish an inspection judgement of the provider of ‘inadequate’ or an inspection judgement of a childminder agency of ‘not effective’. It is for local authorities to determine an appropriate timeframe for withdrawing funding. When withdrawing funding local authorities should take into account the continuity of care for children who are already receiving their funded hours at a provider or with an agency registered childminder and Ofsted monitoring information about the provider or agency.”

Whilst the statutory duty on local authorities to withdraw funding from provision that is judged to be inadequate is clear and cannot be changed, the local authority does have discretion in relation to the timing of when funding will be withdrawn, taking into consideration continuity of care for children who are already receiving funded hours at the setting. This document sets out the grounds on which a provider may appeal the decision, related to the time frame for withdrawal of funding, taken by Surrey County Council’s Withdrawal of Funding Panel and the procedure that will be followed in conducting the appeal.

All providers will be informed of the decision that has been made regarding the timing of withdrawal of funding will be informed of the decision within two working days of the Withdrawal of Funding Panel and have this formally confirmed by letter within 10 working days. This letter will inform notify them of their right to appeal the decision should they wish to.

## **Grounds for an Appeal**

An appeal can be made in relation to the decision about the timing of withdrawal of funding on one or both of the following grounds:

- On the merits of the panel’s decision, e.g. the panel did not act reasonably or failed to take into account relevant information presented
- That the Council did not follow its published procedure in conducting the Withdrawal of Funding Panel process.

## **Exercising the Right to Appeal**

Appeals must be submitted within 10 working days of notification of the Council’s decision to withdraw funding to the Director of Commissioning.

They can be contacted in writing to:

Director of Commissioning  
Surrey County Council  
County Hall  
Penrhyn Road  
Kingston upon Thames  
KT1 2DW

The appeal must state the grounds for the appeal and give as much information as possible to assist the panel in their decision whether or not to uphold the appeal.

### **Consideration of Appeals**

Once the notification of the appeal is received by the Director of Commissioning the following process applies:

- An appeals panel composed of the Director of Commissioning (Chair) and two senior managers will consider all appeals. These managers must not have been involved in the original Withdrawal of Funding Panel.
- One manager from the original withdrawal of funding panel will be invited to attend the appeal panel meeting to provide information regarding the original decision and answer questions regarding the process followed by the panel. This manager will not participate in deciding the outcome of the appeal.
- The appeal panel members will consider information provided by the panel member, the formal correspondence sent to the provider and the minutes of the original panel and review the decision process and grounds for appeal.
- The appeal panel members will then record whether the appeal is upheld or not upheld.
- The appeals panel will inform the provider of its decision and findings in writing within five working days following the appeal meeting.
- If the decision about the timing of withdrawal of funding is upheld Surrey County Council will write to the parents of the children claiming their funded early education hours at the setting to advise them that funding is being withdrawn and the related timescales. These letters will be sent out within 10 working days of the appeal panel.
- If a provider receives an Ofsted inspection before the funding is withdrawn and the inspection outcome is no longer inadequate then the funding will continue with the provider.
- If the decision on timing of withdrawal of funding is not upheld, the Appeal will set an alternative timeframe for withdrawal of funding – this will either be at the end of the current term or at the point when the provider's next Ofsted inspection judgement is published, assuming that this remains an inadequate outcome. Surrey County Council will continue to offer a support package dependant on need and the provider will continue working with Surrey County Council to deliver their improvement action plan.

## Appendix 3 - Frequently Asked Questions

### What happens to funding when a child starts school?

A child reaches statutory school age at the beginning of the first term after their fifth birthday (1 January, 1 April or 1 September). At this age they no longer qualify for FEE. SCC offers most children the opportunity of starting reception class in the maintained sector before the child is of statutory school age.

If the child has a delayed start to their school place during autumn term, they cannot claim their funded entitlement as the school will be funded from the beginning of the term for the child, even if they are part-time, by Schools Finance.

### What if a child lives outside of Surrey or attends another setting outside of the county?

Funded Early Education is not linked to where the child lives. It is the Local Authority where the child is educated that pays the funding. If a child goes to another setting that is not in Surrey, please make sure that no more than the maximum hours are claimed between the two local authorities. It is the setting's responsibility to check the SCC Child Declaration Form to make sure this is not happening.

### Can I offer funded early education during school holidays?

Funded early education can be offered throughout the year including at weekends rather than just during maintained school term times, e.g. 10.96 hours per week for 52 weeks per year for a universal 15 hour offer or 21.92 hours per week for 52 weeks per year for an extended 30 hour offer. This is called a stretched offer. If your stretched offer is for less than 50 weeks each year, you should inform your parents that it is unlikely that they will be able to take their full entitlement.

The total annual number of hours claimed cannot exceed 570 hours or 1140 hours per child. The maximum number of hours a child can have in a week will be dependent on how many weeks in a year you are open but can be no more than 15 hours or 30 hours per week.

### Examples of stretched offers:

#### Universal 15 hour offer:

52 weeks	10.96 hours
51 weeks	11.17 hours
50 weeks	11.40 hours

#### Extended 30 hour offer:

52 weeks	21.92 hours
51 weeks	22.35 hours
50 weeks	22.80 hours

### Can I open in the school holidays if I have a term time only provider agreement?

There is an expectation that if you have a term time provider agreement that you will be closed in the school holidays. It is unlikely that children on a term time offer will be attending your setting during these periods.

### **What if I can't offer 15 hours a week?**

If you are unable to open for 15 hours a week, for example, because the premises are unavailable, the parent can choose to use their child's remaining funded hours at another provider.

### **What if I can't offer 38 weeks a year or 30 hours each week?**

There is no requirement that providers must open for at least 38 weeks of the year or that providers must offer 30 hours each week in order to deliver funded entitlement. However even if you only offer 15 hours of funded early education a week to three and four-year-olds, you may still be part of a 30 hour offer for a parent. For example, a parent may take their universal (first) 15 hours with a full day care setting and then their extended (second) 15 hours with you.

This means that if you're offering a place to a parent and they've given you their 30 hour eligibility code, even if you're not delivering more than 15 hours of funded early education, you should check this code in the Early Education Portal before offering them a place to make sure you'll get funded.

### **If I can't open for 38 weeks a year, do I have to tell parents?**

Yes, you must tell parents in writing that you are offering less than they are entitled to. Your letter should explain the full entitlement, give the Surrey Family Information Service contact details ([surrey.fis@surreycc.gov.uk](mailto:surrey.fis@surreycc.gov.uk)) and explain the potential drawbacks of going to a setting offering less than 38 weeks per year.

### **Can a child go to more than one provider?**

Yes, but if the child attends just term-time settings the total claim must not be more than 15 hours or 30 hours a week (if eligible for the extended entitlement). If the child attends through the holidays, the maximum number of hours each week will be less.

Parents must make it clear on the Declaration Form before the beginning of each funded period where they want to claim the funded hours. Priority will be given to the setting who submits their information first.

Child attending stretched **and** term time providers –

Where the stretched funding provider submits their claim first, only the weekly stretched hours balance will be available for the term time setting to claim;

Where the term time only provider submits their claim first, there will only be a balance of hours for the stretched funding provider to claim, which means that the hours may “run out” before the end of the funded period. The provider will need to charge the parent for any hours that are not funded.

It might be helpful for both settings to agree to work with the Funded Early Education Team to maximise funding for each provider.

A parent may choose to pay for all of their child's care at your setting if they are using all of their funded hours at another setting.

If a child goes to both your setting and a maintained nursery class or school, you will only be able to claim for the funded hours that the parent is not using at the maintained nursery class or school.

### **For example:**

- If a child with a universal 15 hour offer goes to a maintained nursery class for three hours every morning and your setting for two afternoons a week, all the universal funding will go to the school and you will have to charge the parent.
- If a child with an extended 30 hour offer goes to a maintained nursery class for 15 hours a week and your setting for 25 hours a week, we will be able to fund you for 15 hours and the school will also get funding for 15 hours. You will charge the parent for the additional 10 hours.

When a child is accessing their Funded Entitlement at more than one provider, providers should work in partnership with other providers and parents to ensure continuity of care and effective transitional arrangements to support the child's learning, development and well-being (for example, sharing child development records, the two year progress check and details of hours attending).

The Family and Childcare Trust have created a toolkit exploring different ways of responding to the extended funded entitlement through a partnership approach. You can find out further information at: [www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-toolkit](http://www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-toolkit)

### **What if a child goes to my setting for more than their funded hours?**

If a child goes to your setting for more than the maximum funded entitlement, or for hours outside your FEE sessions as detailed in your information for parents or Terms & Conditions the parent must pay you for the additional time. Please note that children funded by FEET should be able to access their entitlement with no additional charge. A session length for the delivery of FEET should not be set so that a parent has to pay for any additional time unless they wish to. Children moving from FEET to FEE should be able to continue to access the same hours, terms and conditions they were accessing under FEET if they request to do so.

It is your responsibility as the provider to make arrangements with the parent to pay for any additional services. You should make parents aware in writing of any charges for additional services before they take up their funded place. Your offer for delivery and charging should be clear and transparent so that parents understand what they will be charged for and how much this will be.

You must give parents information on FEET and FEE and run a clear and transparent invoice system, which does not show a charge for the funded entitlement. The invoice should include the number of funded hours and detail of what the charges apply to. Providers should require parents to sign to confirm that they have read and understood the charging arrangements.

Where a child is only accessing FEET or FEE at your setting there is no need to send parents an invoice.

### **Can a child change from stretched hours to term time hours or term time hours to stretched hours once a claim for funding has been made?**

Once a child starts at a childcare provider, they will have to continue claiming either term time or stretched hours until the funded period after their next birthday to ensure they do not exceed the maximum number of hours. You should make parents aware of this before they take up their funding.



### **What happens once my setting is registered to deliver funded entitlements?**

SCC will issue you with a Department for Education unique reference number (DFE URN) in addition to your Ofsted URN.

Once your application has been approved and you have secure access to the Early Education Portal, you will be able to claim the funding immediately. You will find all the forms you need to claim funding at [www.surreycc.gov.uk/fundedearlyeducation](http://www.surreycc.gov.uk/fundedearlyeducation)

### **What happens if I am already claiming for FEET children and receive an Ofsted outcome of requires improvement or inadequate?**

If you receive a requires improvement Ofsted inspection outcome we will contact you to discuss whether your setting will be able to remain in the Directory of Providers and what support we might be able to offer.

If you receive an inadequate Ofsted inspection outcome, Ofsted will notify us before the inspection report is published. At the point of notification, we will not agree to provide FEE or FEET funding for any further children at your setting.

In exceptional circumstances, we may continue to fund children in a setting with an Ofsted inspection outcome of inadequate.

### **How do I withdraw from the Surrey 'Directory of Providers for 2, 3 and 4 year olds'?**

If you choose to withdraw, you must tell the Funded Early Education Team in writing. If you withdraw part way through a funded period, you will need to repay any funding already paid to you for that funded period.

You should write to individual parents giving at least a funded period or three months' notice to allow them to make alternative arrangements.

### **How do I access the Early Education Portal to make my claims for funding?**

As part of the registration process, you will need to complete a Login Request form. You can request up to three logins if you are a group setting and two logins if you are a childminder.

Each person must have their own mobile number to be able to receive a code to enter into the log in screen to access the portal. Where an owner or manager needs to access multiple accounts these can be linked together so that only one mobile phone needs to be used to access all accounts. At least one person in each setting has to have 'manager' rights to be able to complete and electronically sign the provider agreement.

If a member of staff leaves the setting and has access to a portal account, you must inform the Funded Early Education Team immediately. They will then remove this log in from the account. This is important as it ensures staff members who no longer are employed at a setting do not have access to children's information.

### **How many hours is each child entitled to in a school or private, voluntary or independent setting?**

Children are entitled to a maximum of 570 hours per year for the universal entitlement or 1140 hours for the extended entitlement. This is either delivered over 15 hours or 30 hours per week for a maximum of 38 weeks a year or for fewer hours for more weeks in the year although the total number of hours will remain 570 or 1140 per year.

Please note: A place in a specialist nursery equates to a 15 hours per week universal offer. To access additional hours, families will need to have a valid 30 Hours Funded Childcare code to access the extended 15 hours per week offer.

### What is a funded period?

Each financial year is divided into three funded periods as set out below:

<b>TERM TIME</b>	<b>Autumn 2020</b>	<b>Spring 2021</b>	<b>Summer 2021</b>
Maximum no of hours	210	174	186
Maximum no of days if open five days a week	70	58	62
Maximum no of weeks	14	11 weeks and 3 days	12 weeks and 2 days

<b>STRETCHED</b> – evenly across the year		Maximum 52 weeks = 10.96 hours
<b>Maximum number of hours</b>		
<b>1 September – 31 December</b>	<b>1 January – 31 March</b>	<b>1 April – 31 August</b>
187.35 hours	143.5 hours	242.15 hours

Due to where the school Easter holidays fall in 2021, the first day of April is counted in the Summer funded period and therefore there are 11 funded weeks and three days in Spring (1 January – 31 March) and 12 funded weeks and two days in Summer (1 April – 31 August).

Please be aware of the following:

- Once the Provider Agreement 2020/2021 is available, if you have entered 1 April as an open day in the summer funded period, you can complete your claim for Returning Children from 1 April.
- Also if you have entered 1 April as an open day in the Provider Agreement 2020/2021 for the summer funded period, you can also claim for children already in your setting but first eligible to claim in the summer funded period from 1 April.
- All new children starting at your setting in the summer funded period but after the Easter Holidays should have a start date of 19 April or later.

You can choose when you open but you cannot exceed the maximum number of days allowed for each funded period. If you want to follow Surrey school term dates they can be found at [www.surreycc.gov.uk/schools](http://www.surreycc.gov.uk/schools). You are able to take inset days but these should be shown as closed days and you will not be funded for those days. You will be funded for the May Day Bank Holiday but not for any other Bank Holidays.

### How much is the funding worth?

The funded early education is not about cash. The funded early education is a guarantee of a funded place. It is not a voucher and it is not a subsidy for parents. It is worth something to the provider, but not to the parent.

The rate paid to providers for FEET is £5.96 per hour per child.

The rate paid to providers for FEE is £4.72 per hour per child for universal and extended hours.

### **What happens when a child starts at my setting?**

At the beginning of each funded period every parent must fill in and sign a SCC Declaration Form. You should ensure that this form is completed and signed by the parent or carer and that the child has attended their first session before making your claim for funding. When making the first claim for a FEET funded child you can only claim from the date the FEET application was received and agreed by the Funded Early Education Team. If you are unsure of this date please contact the Funded Early Education Team.

### **What is headcount date?**

Headcount date will always be the Tuesday after your first full week in the funded period so will vary from setting to setting. The headcount date for the current funded period is shown on your home page of the Early Education Portal.

We will fund eligible two, three and four-year-olds who are at your setting on or before headcount day for the whole funded period as long as they didn't start the funded period at another setting or give notice before the start of the funded period that the child will be leaving, or falls into one of the categories below.

If a child joins your setting after the headcount date, we will pay you from the day that the child starts with you unless the child had been going to another setting within the same funded period. In this case we will not fund the child and you will need to charge the parents your usual fees for this funded period.

### **What happens if a child leaves my setting during the funded period?**

If a child leaves during the funded period and **you are not able to fill their place** we will not generally reclaim funding unless:

- You receive an inadequate outcome following an Ofsted inspection
- the child moves house
- there is a change in a parent's employment circumstances
- where a child has special educational needs or a disability and a different setting would be more appropriate.
- where there has been social worker involvement.

You must tell us if another child uses those hours, otherwise we'll be paying you twice for the hours.

### **What happens if a child does not return at the beginning of the new funded period?**

If a child does not return at the beginning of a funded period, the hours will move with the child and you cannot charge a notice period for these funded hours. Any charges relating to a notice period for hours paid by the parent or carer is a matter between the parent or carer and the provider.

### **What happens if a parent wishes to change their child's funded hours?**

If a parent wishes to change their child's number of funded hours at your setting, you must ask them to fill in a change of hours request form (you keep this form). You can download these forms from [www.surreycc.gov.uk/fundedearlyeducation](http://www.surreycc.gov.uk/fundedearlyeducation). You will then amend the hours in the Early Education Portal.

### **What if a child takes up their funded place part way through the year?**

If a child takes up their funded place part way through the year, the number of hours will be adjusted to reflect the portion of the year remaining.

### **How will you know when I am open each funded period?**

You will need to complete this information in the Early Education Portal. You must let the Funded Early Education Team know if for any reason you need to make any changes to the dates you have entered in the Early Education Portal by sending us a Data Correction Form. This can be downloaded from [www.surreycc.gov.uk/fundedearlyeducation](http://www.surreycc.gov.uk/fundedearlyeducation)

This is important as it could affect the number of hours you are able to offer a child each week.

### **What if I sell the setting or move the setting to different premises?**

As soon as you know the registered person for your setting is going to change you **must** email the Funded Early Education Team to ask for a re-registration pack. The new registered person **must** re-register with SCC in order to offer FEE and FEET places. You **may** also have to re-register with Ofsted.

Committee run groups that have a change of chairperson do **not** need to re-register with Ofsted but **should** tell the Funded Early Education Team in writing of the change. They will **not** need to re-register on the 'Directory of Providers for 2, 3 and 4 year olds'.

### **What if I am closed unexpectedly?**

If your setting is closed for example due to snow, or other unplanned incidences, you need to advise us by contacting 01372 833811 or [fundedearlyeducation@surreycc.gov.uk](mailto:fundedearlyeducation@surreycc.gov.uk). In most cases we will not remove the funding for these days. If you are a childminder and unable to work due to short term illness you will need to advise your parents and ourselves. Depending on the circumstances we may remove the funding for the period of closure. When this occurs the child's claim in the Early Education Portal must be amended with a Leavers Date to allow another provider to claim the balance of funding.

### **What happens if I am changing the address of my setting?**

As soon as you know that you will be moving to new premises the registered person **must** email the Funded Early Education Team to inform them of the new address. You **may** also have to re-register with Ofsted.

### **What records do I need to keep and for how long?**

As a person or organisation holding personal data, your setting must be listed on the Public Register of Data Controllers held by the Information Commissioners Office. For more details call the Information Commissioners Office on 0303 123 1113 (local rate) or 01625 545 745 if you prefer to use a national rate number or visit [www.ico.org.uk](http://www.ico.org.uk)  
Your setting must keep all SCC Declaration Forms, Change of Hours Forms, Data Correction Forms and Registers for a minimum of seven years in case of an audit. If not kept on site, records must be stored locally. You do not need to keep copies of birth certificates or passports.

## **Why is the annual early years' Census important?**

Central government bases the funding SCC gets on the number of children reported in the Department for Education annual Census each January. All providers must complete full and accurate Census data in the Early Education Portal by the given date, to make sure we are given the right amount of funding each year. If you do not return the data on time, we may remove you from the 'Directory of Providers for 2, 3 and 4 year olds'. This would mean that you could not offer FEET or FEE.

## **What information do I have to give parents?**

Before parents take up a funded place you must tell them in writing:

- about charges for any extra time
- the charges for extra services including snacks and/or lunch
- the payment and invoicing processes for extra services, including timescales
- the Provider Agreement contractual arrangements to relating notice periods
- the implications for the parent if you do not offer 38 weeks a year
- how the funded early education is arranged in the setting (core Funded Early Education for two, three and four-year-olds hours, optional extra services such as music or French lessons)
- charging policy for unexpected closures (for example the weather or flu)
- any implications where you stretch the funded early education throughout the year and a child leaves your setting during a funded period. Parents are not able to change the type of funding offer (stretched or term time) until the funded period after the child's next birthday).

You should also make a copy of the Provider Agreement available to parents.

Surrey Family Information Service has information for parents on FEET and FEE which are also available online in the new academic year via [www.surreycc.gov.uk/fis](http://www.surreycc.gov.uk/fis)

## **How does the claim system work?**

Before we can pay you, you must have completed your Provider Agreement in the Early Education Portal. You can only claim for the number of hours for which the child's parent has asked you to claim.

You must keep a daily register and:

- If your register is completed on paper you should fill it in using a pen
- clearly indicate who is present on any given day
- use consistent codes for non-attendance with an explanation. You may like to use the following Surrey schools codes, not all will be relevant to you:
  - / morning attendance
  - \ afternoon attendance
  - H holiday of 10 days or less
  - F holiday of more than 10 days
  - I illness
  - N no reason supplied for absence
  - L Late
  - R Religious observance
  - Y Setting is unable to open (for example due to poor weather or damage to building).

- You may also need to record additional information in line with the Statutory Framework for the EYFS.

If a child is registered to go to your setting on set days but is regularly absent you will need to be able to show an audit or the reasons that you have claimed for that child for those days. You may be asked to show, for example, what steps you have taken to make sure that the parents are aware of their entitlement and the attendance requirements at your setting.

Where you know that a child is likely to be absent for more than two consecutive weeks within a funded period you may claim FEET or FEE only if the parent has given you a date when the child will return to your setting.

Early years Declaration Forms are available to download from [www.surreycc.gov.uk/fundedearlyeducation](http://www.surreycc.gov.uk/fundedearlyeducation). **Please make sure you use 2020-21 forms.**

### **What do I do if a parent changes their mind after the headcount?**

If a parent wishes to reduce or increase the amount of their child's FEET or FEE hours with you after the headcount date you will need to change the hours in the Early Education Portal. Please refer to the user guide in the Early Education Portal for instructions on how to claim funding.

The parent will also need to fill in a change of hours form. You will need to keep the change of hours form for seven years. You can download the form from [www.surreycc.gov.uk/fundedearlyeducation](http://www.surreycc.gov.uk/fundedearlyeducation).

Remember that a child who goes to more than one setting may already be getting the maximum funding and we may not be able to pay you for the increase in hours at your setting. Also, if a child has been to another setting you may not get funding as it will have been paid to the other setting.

### **What do I do if a child moves settings within a funded period?**

Once a parent has filled in a SCC Declaration Form, they will know that their child will not be funded if they move to another setting, unless there are exceptional circumstances. The new setting will be entitled to charge the parents their normal fees.

### **What do I do if a child starts at my setting after the headcount?**

As long as the parent did not fill in a SCC Declaration Form for another setting and the child did not start at the other setting or school, we will pay you from their first day with you.

### **Can I backdate claims?**

No, claims have to be made during the funded period in which the child takes up or uses their funded early education place. If a parent has given you the relevant forms on time but due to an administrative error the child has not been funded, you can contact the Funded Early Education Team, who may, in exceptional circumstances, add a late claim to the Early Education Portal for you.

Late claims will only be accepted up to 6 weeks into the new funded period.

### **What happens if you pay me too much money?**

There may be times when we pay you too much money. This can happen if you receive an estimate payment for more children than you actually claim for or children leave or reduce their sessions during the funded period. When this happens, we will send you an invoice. We will send invoices around 6 weeks following the end of the funded period. This means that you won't be expected to pay invoices during the longer holiday periods, but you may need to take this into account in your business processes.

There may be some circumstances where we will need to offset overpaid amounts from a previous funded period against payments for future funding periods. This might be for example, where larger amounts of monies are owed.

### **Audit of records**

The Funded Early Education Team and SCC's auditors visit a sample of settings to look at records kept relating to FEET and FEE. If we are going to visit you, we will usually contact you to arrange a mutually convenient date and to tell you what documents you will need to show us.

Under Section 9 of the Childcare Act 2006, local authorities have the power to place conditions of funding on providers of childcare. If a provider fails to meet the conditions set by SCC (in this Provider Agreement), you may need to repay us all or part of the funding you have been paid for FEET or FEE and you may be removed from the Surrey Directory of Providers. We may also contact parents directly if necessary.

### **Will I still be able to claim FEET/ FEE funding if...?**

- The setting receives an Ofsted inspection grading of Inadequate
- The setting's registration is suspended by Ofsted
- We do not meet the Safeguarding & Welfare Requirements Statutory Framework for the EYFS 2017
- We do not comply with other legal requirements, for example - health and safety, disqualification, data protection
- We commit fraud or misappropriate funds or grants
- We are not able to produce SCC Declaration Form signed and dated by the parent or carer when requested
- We do not return the Spring headcount and early years Census Form by the given date
- We do not safeguard children from abuse as set out in Working Together to Safeguard Children 2015
- We are in clear breach of the SSCB procedures manual to safeguard children from abuse and neglect
- We do not comply with the fundamental British values as set out in HM Government Prevent

No. Being in breach of any of the conditions set out in this Provider Agreement 2020-21 may result in the provider be withdrawn from the Surrey Directory of Providers. Withdrawal means you will not be able to claim funded early education for two, three and four-year-olds until you are compliant again. If you are withdrawn from the list you will need to re-register, following the standard process.