

**Terms and Conditions of Agreement for the Provision of Early Years  
Free Entitlement (EYFE)**

**between**

**Brighton & Hove City Council (BHCC)**

**and**

**the Provider named in the Annual Core Offer form (the Provider)**

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## 1. Introduction

*Objective – to outline how the Early Years Free Entitlement (EYFE) works and the relationship between Brighton & Hove City Council (BHCC) and the Provider*

- 1.1 The Agreement between BHCC and the Provider consists of these Terms and Conditions and the Annual Core Offer – Providing the Early Years Free Entitlement (EYFE) as signed by a new Provider and subsequently submitted by existing providers and agreed by BHCC.
- 1.2 This Agreement is based on the [Free early years provision and childcare: model agreement - GOV.UK \(www.gov.uk\)](#) By submitting and signing (as outlined in Section 1.1) the Annual Core Offer form the Provider agrees to abide by these Terms and Conditions, and to provide EYFE as set out in their Annual Core Offer form as a condition of EYFE funding from BHCC.

This Agreement applies to the 15 hour entitlement for the most disadvantaged two year olds (the 'disadvantaged two year old entitlement'), the 15 hour entitlement for three and four year olds (the universal entitlement) and the working parent entitlements which include: the extended 30 hour entitlement for eligible working parents of three and four year olds; from April 2024 the 15 hour entitlement for children aged two of eligible working parents; from September 2024 the 15 hour entitlement for children aged nine months of eligible working parents; from September 2025 the 30 hour entitlement for children aged nine months of eligible working parents.

- 1.3 The following frameworks and legislation underpin the responsibilities, rights and obligations as set out in this Agreement  
[Early education and childcare \(applies from 1 April 2024\) - GOV.UK \(www.gov.uk\)](#)  
[Early years entitlements: local authority funding operational guide 2024 to 2025 - GOV.UK \(www.gov.uk\)](#)  
[Childcare Act 2006](#)  
[Early years entitlements: local authority funding operational guide 2024 to 2025 - GOV.UK \(www.gov.uk\)](#)  
[Childcare Act 2016](#)  
[The Local Authority \(Duty to Secure Early Years Provision Free of Charge\) \(Amendment\) Regulations 2014](#)  
[The Childcare \(Early Years Provision Free of Charge\) \(Extended Entitlement\) \(Amendment\) Regulations 2017](#)  
[Early years foundation stage \(EYFS\) statutory framework - GOV.UK \(www.gov.uk\)](#)  
[Special educational needs and disability code of practice: 0 to 25 years January 2015](#)  
[Data Protection Act 2018](#)  
[Equality Act 2010](#)  
[School Admissions Code 2021](#)  
[Children Act 1989](#)  
[Children Act 2004](#)  
[Working together to safeguard children - GOV.UK \(www.gov.uk\)](#)

- 1.4 Providers will not be funded for providing EYFE unless the Annual Core Offer form and supporting documentation has been submitted and agreed by BHCC. Before agreeing to the Provider's Annual Core Offer BHCC will check that the details on the form comply with this Agreement. Where any issues relating to the Annual Core Offer form submitted arise BHCC will raise with the Provider to resolve before agreeing to fund the Provider to offer EYFE.
- 1.5 Supporting documents which the Provider must submit as part of their Annual Core Offer form include
  - 1.5.1 Sample invoice for parents (if applicable)
  - 1.5.2 EYFE session times as published for parents
  - 1.5.3 Information on the number of standalone sessions as published for parents
  - 1.5.4 Fees and charges as published for parents for sessions which include EYFE hours
  - 1.5.5 Information on notice periods as published for parents
  - 1.5.6 A link to where the above documents can be found on the Provider's website
  - 1.5.7 Safeguarding policy (new providers only)
  - 1.5.8 SEND (or inclusion) policy (new providers only)
- 1.6 Appendix 2 "Information for Families – Good Practice for Providers" may be used as a guide and should result in a smooth approval process.
- 1.7 **This Agreement commences on the date that BHCC formally notifies the Provider in writing that their Annual Core Offer and supporting documentation (with any changes as agreed) has been accepted.** For avoidance of doubt, and except in exceptional circumstances, BHCC will not be liable for and will not fund any EYFE provision prior to the date of this approval. It is therefore in the Provider's interest to ensure that the Annual Core Offer is and remains compliant with the requirements of this Agreement.
- 1.8 This Agreement sets out the requirements and conditions under which BHCC will fund providers to deliver EYFE in accordance with the legal frameworks and statutory guidance set out in Section 1.3. Except where otherwise indicated in this Agreement the Provider is solely and exclusively responsible for delivering EYFE and for compliance with all relevant legislation and regulations including meeting its obligations and conditions relating to Ofsted registration. The Provider is responsible for obtaining any necessary consents or approvals and meeting the required standards to deliver EYFE.
- 1.9 This Agreement does not create any legal partnership or joint venture between BHCC and the Provider, nor any relationship of principal and agent, nor authorise the Provider to make or enter into any commitments for or on behalf of BHCC. The Provider shall not hold itself out in any manner as legal partner, agent or otherwise authorised to represent BHCC.
- 1.10 BHCC to the fullest extent of the law accepts no liability for any consequences, whether direct or indirect, arising or resulting from the Provider in its provision of

EYFE, the use of EYFE funding or from the termination or withdrawal of the funding under Section 16 of this Agreement. The Provider is responsible and must indemnify and hold harmless BHCC against all third party claims, demands, actions, costs, expenses, losses and damages arising in law or otherwise relating to the Provider's delivery of EYFE. BHCC's liability under this Agreement is limited to the payment of EYFE funding in accordance with the terms of this Agreement.

- 1.11 Other general legal conditions of this Agreement are set out in the Annex (Standard Council Legal Terms) as attached.

## 2. Key Responsibilities

*Objective – to provide clarity on certain key responsibilities and roles of the parties*

### **BHCC**

- 2.1 Must secure an EYFE place for every eligible child in its area.
- 2.2 Will work in partnership with providers to determine and agree how the obligations to deliver EYFE will best be met including discussion with the Provider in respect of their proposed Annual Core Offer.
- 2.3 Will be clear about its role and the support offered locally to meet the needs of children with special educational needs and disabilities (SEND) as well as its expectations of providers as set out in the [Special educational needs and disability code of practice: 0 to 25 years January 2015](#).
- 2.4 Must contribute to safeguarding and promote the welfare of children in Brighton & Hove.
- 2.5 Will store and manage data in accordance with the [Data Protection Act 2018](#).

### **Early Years and Childcare Providers Offering EYFE**

- 2.6 Must comply with all relevant legislation and guidance, including additional government guidance issued in relation to specific circumstances, including but not limited to the provisions set out in Section 1.3.
- 2.7 Must take out and maintain all insurance necessary to meet Ofsted insurance requirements.
- 2.8 Should work with BHCC to **ensure that EYFE is delivered fairly, transparently and in accordance with this Agreement**, the underlying legislation and government guidance. The Provider should deliver EYFE consistently to all parents, whether in receipt of 15 or 30 hours, regardless of whether or not the parent chooses to pay for non-EYFE hours, optional services or consumables. This means that the Provider should be transparent and communicate to parents and prospective parents details of days and times that they offer EYFE, along with any optional services and charges. Children accessing EYFE should receive the same quality and access to provision as those whose parents opt to pay for additional services.

- 2.9 Must follow the [Early years foundation stage \(EYFS\) statutory framework - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/early-years-foundation-stage-eyfs-statutory-framework) and have **clear safeguarding policies and procedures in accordance with BHCC guidance** for recognising, responding, reporting and recording suspected or actual abuse (see Section 3). If requested the Provider must give BHCC full access to its safeguarding policies and procedures to demonstrate compliance. The Provider is also required to update its policies and procedures to take account of any changes in statutory requirements and to work collaboratively with BHCC to improve any areas where shortcomings have been identified.
- 2.10 **Must have arrangements in place to support children with SEND** including a clear approach to identifying and responding to SEND. The Provider should utilise the SEND Additional Support Fund and Disability Access Fund (see Section 9) to deliver effective support, while making information available to parents about their SEND offer. The Provider is also required to update its policies and procedures to take account of any changes in statutory requirements and to work collaboratively with BHCC to improve any areas where shortcomings have been identified.
- 2.11 Must have a data protection policy and must store and manage data in accordance with the [Data Protection Act 2018](https://www.gov.uk/government/consultations/data-protection-act-2018).

### 3. Safeguarding

*Objective – to ensure delivery of EYFE in accordance with established and evolving safeguarding standards*

- 3.1 BHCC has overarching responsibility for safeguarding and promoting the welfare of all children and young people in the city and may issue further guidance to providers in the discharge of these duties with which the Provider should comply. It has a number of statutory functions under the [Children Act 1989](https://www.gov.uk/government/consultations/children-act-1989) and the [Children Act 2004](https://www.gov.uk/government/consultations/children-act-2004) which make this clear, and [Working together to safeguard children - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/working-together-to-safeguard-children) sets these out in detail.
- 3.2 The Provider has a primary duty to ensure that children are kept safe. **A lead practitioner must take responsibility for safeguarding** and all staff must have training to identify signs of abuse and neglect. If a professional working with a child has concerns regarding their or their family's well-being they must refer to [Front Door for Families](https://www.gov.uk/government/consultations/front-door-for-families) on 01273 290400 or complete the [online form](https://www.gov.uk/government/consultations/working-together-to-safeguard-children). The Provider must ensure that their safeguarding policy is comprehensive, up-to-date and complies with all relevant legislation and codes of practice, including [Working together to safeguard children - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/working-together-to-safeguard-children) and guidance from the [Brighton & Hove Safeguarding Children Partnership](https://www.gov.uk/government/consultations/brighton-hove-safeguarding-children-partnership). The safeguarding policy should be available to parents on the Provider's website where the Provider has one and otherwise notified in its manuals.

### 4. Eligibility

*Objective – to summarise access to and eligibility for EYFE*

- 4.1 BHCC must ensure that every child can access EYFE no later than the beginning of the term after the child and the parent meets the eligibility criteria for the free

entitlements. BHCC will work with providers, including reviewing Annual Core Offer forms submitted, to ensure that completely free and standalone EYFE places (see Section 5.2) are offered and in sufficient numbers in the city, and will seek to ensure that providers engage collaboratively and constructively with BHCC to achieve this objective.

- 4.2 The Provider should check original copies of documentation for example birth certificate, passport, to confirm that a child has reached the eligible age on initial registration for all free entitlements. The Provider should retain paper or digital copies of documentation to enable BHCC to carry out audits and fraud investigations. Where a provider regains a copy of documentation this must be stored securely and deleted in accordance with [Data Protection Act 2018](#).
- 4.3 DfE have produced a [privacy notice template](#) (Privacy Notice: suggested text for pupils) for providers to give to parents to explain how their information will be used. The Provider may use this and amend it as appropriate to its provision.
- 4.4 Details of eligibility for all the entitlements are set out in Appendix 1 “Early Years Free Entitlement (EYFE) Eligibility Information for Providers”.
- 4.5 **Providers must only offer the disadvantaged two year old and working parent entitlements to eligible children.** If the Provider offers EYFE to any child in error, where a child is not eligible, BHCC will not fund the child and any issues in relation to payment for these sessions must be resolved between the parent and the provider. BHCC will not take responsibility for resolving such situations. Any payments made by BHCC to the Provider in respect of any child that is not eligible for EYFE funding will be offset and recovered as an overpayment from future EYFE payments under section 12.9 below.

## 5. EYFE Places and Flexibility

*Objective – to ensure correct and full provision of sufficient EYFE which meets the needs of parents*

- 5.1 In order to offer any or all of the entitlements the Provider must show on its Annual Core Offer form provision which is completely free and standalone.
- 5.2 For these purposes
  - 5.2.1 ‘free’ means places for which no charge is made to parents, with no fee which tops up the amount paid for EYFE to the provider by BHCC
  - 5.2.2 ‘standalone’ means places which can be accessed by parents without the need to purchase additional hours of childcare either side of EYFE
- 5.3 The Provider should indicate on its Annual Core Offer form how many EYFE standalone places are offered and may show this as a minimum number.

- 5.4 The Provider should indicate on its Annual Core Offer form the times at which standalone places are offered.
- 5.5 Each '15 hour' EYFE place should be available to parents for
- 5.5.1 15 hours a week for 38 weeks a year, or
  - 5.5.2 570 hours a year if offered all year round
- 5.6 If the Provider is not open for 38 weeks a year and is therefore not able to offer the full 15 hour EYFE entitlement they must make it clear to parents that they may not be able to access additional provision elsewhere to make up the full EYFE hours.
- 5.7 **Providers are strongly encouraged to offer the full extended EYFE 30 hours for eligible three and four year olds** and from September 2025 all children eligible under the working family criteria for
- 5.7.1 30 hours a week for 38 weeks a year or
  - 5.7.2 1140 hours a year if stretched and offered all year round
- 5.8 The Provider may choose not to offer the full extended 30 hour EYFE but in this case must make it clear to parents that they may not be able to access provision elsewhere to make up the full extended 30 EYFE hours.
- 5.9 BHCC encourages providers to offer flexible packages of EYFE that meet the needs of parents and children and ensuring a degree of stability for providers provided that the following standards are maintained
- 5.9.1 No session to be longer than 10 hours
  - 5.9.2 No minimum session length (subject to the requirements of registration on the Ofsted early years register)
  - 5.9.3 Not before 6.00 am or after 8.00 pm
  - 5.9.4 A maximum of two single sites in a day
- 5.10 The Provider should ensure that, where it is reasonably practicable, **children are able to take up their EYFE in continuous blocks and avoid artificial breaks** being created throughout the day, for example over the lunch period.
- 5.11 For the purposes of Section 5.10 'reasonably practicable' means that objective constraints do not exist which would make it unreasonably difficult in practice to offer EYFE in continuous blocks. Examples where it would *not* be reasonably practicable to offer continuous blocks of EYFE are where a provider has to close at lunchtime because they are in a shared building and the space is only available at certain times of the day, or if they are a small provider and are not able to open over lunch because of insufficient staff cover.
- 5.12 The Provider must **publish their admissions criteria** (see Section 7) and ensure that parents can clearly see and understand which hours and sessions are available



as EYFE. This information should also include any fees charged to parents where EYFE is part of a session.

- 5.13 The Provider may offer EYFE which is part of a longer session with hours either side of EYFE charged for, provided EYFE is offered in a continuous block without an artificial break (see Sections 5.10 and 5.11).
- 5.14 A parent may choose to have fewer EYFE hours for their child if they wish to but **the Provider should not offer EYFE in such a way that makes take-up of full EYFE hours unduly difficult** for parents as a result of restrictions which are applied.
- 5.15 The Provider should allow parents to stretch their child's EYFE where possible by taking fewer hours a week for more weeks of the year. Details of this offer and any restrictions should be indicated in the Annual Core Offer form.
- 5.16 Providers are expected to work in good faith with BHCC to provide sufficient EYFE places which are standalone, as well as those which are part of a longer session, in order to meet parental demand in the city. The Provider must share information about the times and periods at which they offer EYFE and be able to demonstrate that they can offer parents the option of accessing their EYFE standalone through the submission of their Annual Core Offer form. Providers may expect BHCC to discuss the details of their proposals and review the documentation as set out in Section 1.6 to meet these objectives before it approves in writing the Annual Core Offer form which as indicated in Paragraph 1.7 above will be the date of commencement of this Agreement.
- 5.17 The Provider must make information about their EYFE offer, including the times it is available, and the number of standalone sessions (if these are limited) available to prospective parents in a clear, transparent and readily available manner, through publicity and promotional materials, so that parents can make an informed choice of early years provider which best fits their needs. Information on the EYFE offer should include any fees charged to parents where EYFE is part of a session. Where the Provider has a website this information must be shown there with clear navigation for direct access. This information and website link should be made available to BHCC in draft format at the time that the Annual Core Offer form is submitted for agreement and the information should correspond with the details contained in the Annual Core Offer form.
- 5.18 Information to parents as outlined in Section 5.17 should include any charges made where EYFE is offered as part of a longer session.
- 5.19 The Provider should make parents aware of any notice periods if they wish to remove their child from their setting.

- 5.20 The Provider should ensure that notice periods are reasonable for parents if they wish to withdraw their child from EYFE. A reasonable notice period in respect of EYFE places is not more than one month.
- 5.21 Notice periods in respect of any non-EYFE hours may be different provided that the effective notice period in respect of EYFE hours is not affected. If EYFE is offered as part of a longer session during which charged for hours cannot be accessed separately the notice period for the session cannot exceed one month.
- 5.22 A parent may choose to have their EYFE at more than one provider or on more than one site, although not more than two sites in one day (see Section 5.9.4).
- 5.23 The Provider should work in partnership with other providers and parents to ensure continuity of care and effective transitional arrangements to support children's learning and wellbeing, for example sharing development records and the two year progress check. Where a child is attending more than one setting providers must ensure that they work together to confirm that there is clarity and agreement regarding the EYFE claim.

## 6. Charging

*Objective – to ensure fair charging of parents and full visibility and transparency*

- 6.1 Government funding is intended to deliver 15 or 30 hours a week of free, high quality, flexible childcare. It is **not intended to cover the cost of meals, other consumables, additional hours or additional services.**

Providers may charge for meals and snacks as part of an EYFE place and they can also charge for consumables such as nappies or sun cream and for additional services such as trips and specialist tuition. Providers should be mindful of the impact of additional charges, especially on the most disadvantaged parents. Where parents are unable to pay for meals and consumables providers who choose to offer EYFE are responsible for setting their own policy on providing parents with options for alternatives to additional charges including waiving or reducing the cost of meals and snacks or allowing parents to supply their own meals or nappies.

- 6.2 The Provider should deliver EYFE consistently so that all children accessing any of the free entitlements will receive the same quality and access to provision, regardless of whether they opt to pay for additional hours, meals, snacks, consumables or services.
- 6.3 The Provider should not require parents of children in their setting to reserve an EYFE place each term.
- 6.4 BHCC will not intervene where parents choose to purchase additional non-EYFE hours or additional services provided that this is not a condition of accessing an

EYFE place. **Providers should be completely transparent about the nature, scope, cost and optionality of any additional charges** as set out in Section 5 of this agreement. BHCC may consider this matter further with the Provider in its review of the Provider's proposed Annual Core Offer form and accompanying documentation and may suggest alterations to meet the objective.

- 6.5 The Provider may charge parents a deposit to secure their child's EYFE place but should refund this in full within a reasonable timescale following the child starting at the setting. The Provider should make arrangements regarding deposits clear to parents using the methods set out in Section 5 of this Agreement.
- 6.6 **The Provider cannot charge parents 'top-up' fees**, any difference between their normal charge to parents and the funding they receive from BHCC to deliver EYFE or require parents to pay a registration fee as a condition of taking up their EYFE as set out in Section 5 of this Agreement.
- 6.7 The Provider must ensure any **invoices for parents in receipt of EYFE are clear and itemised**, allowing parents to see that they have received their EYFE completely free and understand fees paid for any additional hours, meals, snacks, consumables or services. The provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific provider.

## 7. Admissions

*Objective – to ensure a clear admissions policy that complies with equalities legislation*

- 7.1 The Provider may set their own criteria for admitting children, providing they comply with equalities and non-discrimination legislation.
- 7.2 The Provider should ensure that their **admissions information is clear and accessible for parents** in their publicity information and on their website so that parents can make an informed decision on where to access their EYFE.

## 8. Partnership Working

*Objective – to facilitate the various partnerships relating to EYFE*

- 8.1 BHCC supports partnership working on four levels between
- 8.1.1 BHCC and providers
  - 8.1.2 Providers and other providers, including childminders, schools and other organisations
  - 8.1.3 Providers and parents
  - 8.1.4 BHCC and parents
- 8.2 BHCC encourages partnership working between different types of early years providers across all sectors and encourages providers to offer flexible provision, alongside other providers.

- 8.3 The Provider should work in partnership with parents and other providers to improve provision and outcomes for children in their setting.
- 8.4 Where EYFE is split across different providers the Provider should discuss and work with parents to agree how a child's overall care will work in practice in order ensure that there is a smooth transition for the child.

## 9. Special Educational Needs and Disabilities (SEND)

*Objective – to ensure good practice and comply with legislation meet statutory guidance in relation to special educational needs and disabilities (SEND)*

- 9.1 The Provider must ensure that they meet the needs of children with SEND, including working with the Brighton & Hove Inclusion Support Service (BHISS). They must have regard to the [SEND code of practice: 0 to 25 years - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/send-code-of-practice-0-to-25-years) and the [Equality Act 2010](#) in the preparation and operation of their policy. The SEND policy should be available to parents on the Provider's website where the Provider has one and otherwise notified in its manuals
- 9.2 The Provider should refer to [Brighton & Hove Early Years Special Educational Needs and Disability \(SEND\) Guide for Professionals](#) which helps early years settings identify a child's SEND, outlines the level of support they are expected to offer, and details how to arrange and monitor the support needed.
- 9.3 **[Additional Support Funding \(ASF\)](#) for inclusion of children with SEND may be available for EYFE hours** as assessed by BHISS.
- 9.4 BHCC's [Local Offer](#) details support for children with SEND who live in Brighton & Hove, and how parents can access support.
- 9.5 The Provider must be clear and transparent about the SEND support on offer at their setting and make information available about it so that parents can choose the right setting for their child with SEND.
- 9.6 The Provider should collect information from parents about their child's eligibility for Disability Living Allowance and therefore the [Disability Access Fund \(DAF\)](#) on the EYFE Parental Declaration Form. **The DAF is a one-off annual payment for eligible children to help them access their EYFE.** If a child changes setting during the academic year the DAF will remain with the original setting.
- 9.7 If a child eligible for DAF is attending more than one setting BHCC will ask the parent to choose which setting should receive the DAF payment.

## 10. Equalities, Social Mobility and Disadvantage

*Objective – to ensure good practice and comply with legislation statutory guidance in relation to equalities, social mobility and disadvantage*

- 10.1 Providers must ensure that they act in accordance with the [Equality Act 2010](#) which outlaws discrimination, harassment and victimisation. The Act applies to a number of 'protected characteristics' including sex, race, disability, religion or belief and sexual orientation. In order to assist BHCC to meet its public sector duty, the Provider must ensure that parents complete equalities monitoring information as requested by BHCC.

#### **Early Years Pupil Premium (EYPP)**

- 10.2 [Early Years Pupil Premium \(EYPP\)](#) is additional funding for early years providers to support the development, learning and care for children from families in receipt of out of work benefits or if they are looked after or have left the care of the local authority through adoption or special guardianship, or if there is a child arrangements order. This funding should be used to support children's progress and development, such as through staff training and resources.
- 10.3 The Provider should ensure that they have collected accurate information from parents via the Early Years Free Entitlement Parental Declaration Form (Appendix 3) to enable eligibility for EYPP to be checked and paid for by BHCC for eligible children.

#### **Statutory Two-Year Progress Check**

- 10.4 The Provider must ensure that the statutory two year progress check is carried out in accordance with the [Early years foundation stage \(EYFS\) statutory framework - GOV.UK \(www.gov.uk\)](#)

#### **English as an Additional Language**

- 10.5 Support for English as an additional language (EAL) is available as assessed by the [Ethnic Minority Achievement Service](#) (EMAS) depending on the child's needs. **The Provider should work with EMAS to ensure that the child's needs are met.**

### **11. Quality**

*Objective – to ensure good practice and comply with legislation and statutory guidance in relation to early years and childcare quality*

- 11.1 The [Early years foundation stage \(EYFS\) statutory framework - GOV.UK \(www.gov.uk\)](#) is mandatory for all schools which offer early years provision and Ofsted-registered early years providers in England, unless an exemption has been granted by the DfE. 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.
- 11.2 In order to provide EYFE providers must deliver the full EYFS and be registered with Ofsted as an early years provider or be a maintained school taking children aged two and over and therefore exempt from registration with Ofsted as an early years provider.

- 11.3 BHCC will fund EYFE places at any provider judged 'good' or 'outstanding' by Ofsted and the Provider is willing to accept BHCC requirements as set out in this Agreement.
- 11.4 BHCC will fund places for children eligible for the universal three and four year old or working parent entitlements at any provider judged 'requires improvement' by Ofsted. The Provider must work with BHCC to address actions highlighted by Ofsted in order to meet requirements as set out in this Agreement.
- 11.5 BHCC will only fund places for disadvantaged two year old children where a setting is rated 'requires improvement' where there is not sufficient, accessible 'good' or 'outstanding' provision, and where it is satisfied that there are no concerns regarding children's welfare or safeguarding.
- 11.6 BHCC will fund EYFE places at new providers registered with Ofsted until the Provider's first full Ofsted inspection judgement is published and the Provider is willing to accept BHCC requirements as set out in this Agreement.
- 11.7 BHCC will fund providers with exemptions from EYFS if a parent wants their child to take up their EYFE at an exempt provider and the Provider is willing to accept BHCC requirements as set out in this Agreement.
- 11.8 BHCC will fund individual children who have exemptions from the EYFS.
- 11.9 **BHCC is not required to fund EYFE at providers who do not meet the quality standards** set out above but may choose to do so to ensure sufficient EYFE places.
- 11.10 BHCC will rely solely on the Ofsted inspection judgement of the Provider as the benchmark of quality.
- 11.11 BHCC will not fund providers who do not actively promote fundamental British values or if they promote view or theories as fact which are contrary to established scientific or historical evidence and explanations.
- 11.12 BHCC will fund providers with an Ofsted inspection of 'met' until their Ofsted quality judgement is published. BHCC will not fund providers with an Ofsted inspection judgement of 'not met'.
- 11.13 BHCC will secure alternative provision and withdraw funding from a provider, as soon as is practicable, when Ofsted publish an inspection judgement of 'inadequate'. When withdrawing funding BHCC will take into account the continuity of care for children already attending the provider, and the Ofsted report and monitoring information about the Provider. If funding is withdrawn the Provider will not be able to offer EYFE again until they have a new Ofsted inspection judgement published which is not 'inadequate'. In this situation the Provider must let any parent who has their child on the waiting list know that they will not be able to take their EYFE at the setting.

- 11.14 BHCC will not withdraw funding from a provider until their Ofsted inspection judgement is published.
- 11.15 BHCC will consider any information published by Ofsted about a provider including the recent history of childcare provision by the provider or childcare provision at the address. This may include where BHCC 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. BHCC reserves the right to refuse, suspend, or terminate EYFE funding based on the published information.

## 12. Funding and Payments

*Objective – to provide clear process and information to providers on EYFE funding and payments*

- 12.1 The Provider will be paid for provision of EYFE once their Annual Core Offer has been accepted by BHCC as outlined in Section 1 of this Agreement.
- 12.2 The Provider must ensure that **parents complete and sign the Early Years Free Entitlement (EYFE) Parental Declaration Form** (Appendix 3) confirming the hours and sessions of EYFE their child has received.
- 12.3 **As outlined in Section 4.5 BHCC will not pay EYFE for children who are ineligible for provision.**
- 12.4 BHCC funds EYFE for in accordance with the requirements and funding rates set out in the [Early years funding: 2024 to 2025 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/early-years-funding-2024-to-2025) where the current national rates can be found.

### **12.5 BHCC's local funding formula for the current financial year can be found at [The Early Years Free Entitlements \(EYFE\) \(brighton-hove.gov.uk\)](https://www.brighton-hove.gov.uk)**

and information on funding rates is sent to providers each March. The funding formula for three and four year olds includes a deprivation supplement for eligible children. BHCC does not offer providers an ad hoc deprivation supplement checking service for individual children.

- 12.6 BHCC issues each provider an indicative budget at the beginning of the financial year which broadly reflects anticipated participation. Individual budgets can be adjusted within the financial year to reflect participation based on estimated and actual (headcount) EYFE hours submitted by providers via the online provider portal.

## 12.7 Payment of EYFE Funding

**Payment of EYFE funding by BHCC to providers is currently made in two instalments each term. Information on how funding is paid can be found at [The Early Years Free Entitlements \(EYFE\) \(brighton-hove.gov.uk\)](https://www.brighton-hove.gov.uk)**

- 12.8 75% of EYFE payments to providers are made at the start of each term based upon an estimate of hours submitted via the provider portal. The balancing payment of 25% is made on completion of the headcount when actual hours are submitted via the provider portal. BHCC will recover any overpayments for one or more of the entitlements made at the start of the term from the balance of any of the other entitlements before making the balancing payment. **Further EYFE payments will not be made until any overpayments have been offset or otherwise recovered.**
- 12.9 Where the Provider is in a recovery position, for either EYFE or ASF payments (see Section 9.3) BHCC will inform the Provider as soon as possible how the funding overclaim will be recovered and will liaise with BHCC's corporate collections team if necessary.
- 12.10 If BHCC are notified by the corporate collections team of continued outstanding debt relating to recovery of EYFE funding, any funding claims from that provider (estimate or balancing) will be suspended until the outstanding debt is cleared.
- 12.11 BHCC will only pay funding for the working parent entitlements from the start of the term after both the following conditions are satisfied
- 12.12.1 the child has attained the relevant age and
  - 12.12.2 the child's parent has a current positive verification of eligibility from HMRC i.e. a valid eligibility code
- 12.12 If a three or four year old child is taking up their universal entitlement and a parent becomes eligible for the extended working parent entitlement part way through a term, the provider can start claiming funding for extended working parent entitlement hours the term following the date on which the parent received their verified code.
- 12.13 All providers must use the online provider portal to provide BHCC with information regarding children's attendance and EYFE hours, and guidance on this is sent to providers each term.
- 12.14 Providers can only claim funding when the child attends; **EYFE will not be paid by BHCC for any notice periods if a child has left a setting.**
- 12.15 Where a child accesses their EYFE at more than one provider or at more than one site (either term-time, or 'stretched' or a mixture of both) funding must be claimed by each provider on a term-time basis, and 'self-stretched' if required.



12.16 BHCC may suspend EYFE payments where a potentially serious compliance issue appears relating to this Agreement and will follow the steps set out in Section 16.

12.17 BHCC reserves the right to change the payment arrangements, for example moving to monthly payments.

#### **Change of Attendance**

12.19 The Provider must notify BHCC as soon as possible of any change to a child's EYFE attendance for example joining, leaving or changing hours, via the online provider portal 'adjustments' section.

12.20 The Provider will receive adjustment funding for any EYFE change of attendance only where this has been notified to BHCC during the term in which it takes place.

#### **Absence**

12.21 The Provider must notify BHCC if a child is absent for a period of more than three weeks. EYFE funding will not be withdrawn if there is a legitimate reason for the child's absence and they are expected to return.

12.22 If a child's attendance is poor, providers must keep a record of reasons for children's absence (e.g., a verbal or written statement from the parent/carers) which may be requested as part of the audit to support an EYFE claim.

12.23 In order to promote the principles and values of EYFE, the Provider is requested to have an attendance policy which supports parents and children to attend their EYFE sessions. It is also the case that inspectors will consider the attendance of children for whom the provider receives early years pupil premium

### **13 Reporting**

*Objective – to ensure timely provision of data for DfE purposes*

#### **13.1 Headcount and Census**

The Provider is required to submit data to BHCC as requested. This includes, but is not limited to, termly headcount information, census information, information as part of BHCC's Childcare Sufficiency Assessment and any other data in relation to early years and childcare provision.

13.2 The Provider must submit termly headcount information regarding actual attendance to support payment and delivery of EYFE. Headcount dates can be found at [The Early Years Free Entitlements \(EYFE\) \(brighton-hove.gov.uk\)](https://www.brighton-hove.gov.uk/early-years-free-entitlements)

13.19 The Provider must make their termly headcount submission via the online provider portal following guidance from BHCC. Providers should claim for eligible children attending during headcount week each term.

- 13.20 BHCC reports annually to the DfE regarding take up of EYFE in the January census. The Provider must submit timely and accurate headcount and census returns, including all required information about their setting.
- 13.21 The Provider must comply with all BHCC requirements and deadlines for information and data provision. **Failure to do so may result in inaccurate, delayed or suspended EYFE funding.**
- 13.22 The Provider should maintain accurate financial and non-financial records relating to EYFE provision and should give BHCC access to these upon reasonable notice.

## 14 Compliance

*Objective – to ensure compliance with EYFE core delivery requirements*

- 14.19 The Provider must maintain all attendance and finance records for a period of six years.
- 14.2 In the event of an audit by BHCC the Provider must have copies of the following documents for the relevant period
- 14.2.1 Parental Declaration forms
  - 14.2.2 Parental Change of Attendance forms
  - 14.2.3 Children’s attendance records
  - 14.2.5 Documentation to prove the status of the Provider, for example registered charity, incorporate company, sole trader
  - 14.2.6 Any other documentation that can reasonably be requested
- 14.3 The Provider must follow all planning guidance and have appropriate planning permission in place.
- 14.4 The Provider must comply with all health and safety and environmental legislation and government guidance although it is not BHCC’s responsibility to monitor compliance.
- 14.5 The Provider must give BHCC and parents at least one month’s notice in writing if they decide to stop offering EYFE.
- 14.6 If the Provider closes part way through a funding period the Provider must pay back unused EYFE funding to enable children to access their EYFE elsewhere.
- 14.7 Failure to pay BHCC any monies owed within given deadlines will result in BHCC implementing its corporate debt recovery policy.

## 15 Compliance Issue Resolution

*Objective – to provide a clear and proportionate process for the resolution of issues of non-compliance with the terms of this Agreement*

15.1 Where any compliance issues arise relating to this Agreement, BHCC will follow the processes with the Provider as set out below.

**Step One – Collaborative Resolution**

15.2 BHCC will set out the issue of concern and will ask for a response from the Provider.

15.3 The Provider should make a senior staff member available who is able to communicate with BHCC by email, telephone and meeting as needed.

15.4 BHCC and the Provider shall work together to consider, agree and record specific actions or changes to the Provider's policies, procedures or practices.

15.5 Step One should be concluded **within four weeks** of the issue being raised by BHCC unless a different timescale is agreed in writing.

**Step Two – Remedial Plan**

15.6 For serious, urgent or repeated issues of compliance or where the measures at Step One have not been resolved within the timescale indicated, BHCC may serve the Provider with a notice issuing or requesting a Remedial Plan from the Provider.

15.7 The notice will set out the details of the compliance issue reiterating what the Provider needs to rectify and give a date by which a Remedial Plan should be submitted to BHCC.

15.8 The Remedial Plan should address the issues set out in the notice along with the actions that will be taken to resolve the compliance issue, along with any documentary evidence.

15.9 BHCC may request changes to the Remedial Plan prior to accepting.

**Step Three – Termination of this Agreement for Compliance Issues**

15.10 If the Remedial Plan from Step Two has not been submitted and/or agreed within a reasonable timeframe as notified by BHCC, where the Remedial Plan has not been implemented as agreed, or for persistent compliance issues, BHCC may issue a Notice to Terminate this Agreement. The Notice will set out the basis for the termination and the date on which the Agreements ends.

15.11 BHCC may in the Notice to Terminate and in its sole discretion allow the Provider one final opportunity to rectify the compliance issue within a strict and short timeframe.

15.12 BHCC may also issue a Notice to Terminate this Agreement immediately where the compliance issue represents a fundamental breach of this Agreement (including but not limited to the undertakings given in the Annex Clause 8) , EYFE Government

legislation or guidance or any other applicable law, or where the compliance issue(s) result or may result in material damage to the reputation of the Provider, BHCC or of EYFE provision.

## **16 Termination of Agreement and Withdrawal of EYFE Funding**

*Objective – to set out processes for termination of this Agreement and EYFE funding*

- 16.1 Suspension of the Provider's registration by Ofsted or a breach of statutory requirements or safeguarding issues may result in the termination of this Agreement and withdrawal of EYFE funding.
- 16.2 **BHCC may withdraw EYFE funding where there are concerns about a provider's financial viability.** It also reserves the right to make EYFE payments in arrears rather than in advance, or in monthly instalments without notice to the provider.
- 16.3 EYFE funding may also be withdrawn as set out in Section 15.
- 16.4 BHCC may refuse to fund a provider if there are reasonable grounds to believe that they will not be able to meet all the terms and conditions of providing EYFE as set out in this Agreement, and in Section A3 of [Early education and childcare statutory guidance for local authorities June 2018](#).
- 16.5 BHCC will not waive the right to act to terminate or withdraw EYFE funding if it does not act immediately.
- 16.6 If funding is terminated or withdrawn the name of the provider will be removed from the Family Service Directory (FSD) of childcare providers offering EYFE in Brighton & Hove.
- 16.7 If funding is withdrawn from a provider but the Provider chooses to continue to offer free places to children they must make it clear in writing to parents that their child is not receiving EYFE.
- 16.8 Where BHCC terminates this agreement BHCC will not be required to make any further payments until the costs and amounts owing to and from the Provider have been calculated. The Provider will be entitled to be paid any balance owing following the final account calculation.
- 16.9 On termination the Provider shall be required to cooperate fully with the transfer of responsibilities relating to children in receipt of EYFE as well as BHCC as set out in this Agreement.

## 17 Appeals Process

*Objective – to provide a clear process for appeal against decisions not to fund a provider or to withdraw funding made under this Agreement*

- 17.1 A Provider may not be approved to offer EYFE, the Agreement may be terminated or have their funding withdrawn as set out in this Agreement. The Provider may appeal against such decisions in the manner set out in this Section.
- 17.2 The Provider should write to the Head of Early Years and Early Help at [eyc@brighton-hove.gov.uk](mailto:eyc@brighton-hove.gov.uk) **within ten working days of receiving the decision** rejecting their application for EYFE funding, or withdrawing their EYFE funding, setting out the grounds for their appeal and including supporting documentation. Appeals reviewed after ten working days will only be considered where good reason is demonstrated for the delay.

## 18 Complaints Process

*Objective – to ensure that parents have a clear and transparent process to raise a complaint with a provider and to outline how providers can complain to BHCC*

### Complaints from Parents

- 18.1 The Provider should ensure it has a complaints procedure in place for parents who are not satisfied that their child has received their EYFE in the correct way, as set out in this Agreement. The Provider's complaints process should be clearly published and accessible for parents.
- 18.2 The Complaints Procedure should indicate that if the matter has not been resolved between the Provider and the parent, the parent should contact BHCC's Family Hubs at [FamilyHubs@brighton-hove.gov.uk](mailto:FamilyHubs@brighton-hove.gov.uk) which will investigate the issue with the support of the early years team.

### Complaints from Providers

- 18.3 Providers who have a complaint about the way in which BHCC manages this Agreement should contact the Childcare Strategy Manager at [eyc@brighton-hove.gov.uk](mailto:eyc@brighton-hove.gov.uk).
- 18.4 Providers may complain about the manner in which this Agreement is being administered but not the contents or the requirements of this Agreement. Decisions made to decline or terminate EYFE funding may be appealed against as set out in Section 17 and are not for this reason dealt with through the complaints procedure. A Provider who incorrectly appeals or complains will be appropriately signposted as set out in this paragraph.
- 18.5 If the parent or provider feels that they have not received a satisfactory response to their complaint and wishes to take the matter further a formal complaint may be submitted through the BHCC [complaints procedure](#).

- 18.6 If a parent or provider is not satisfied with the way in which their complaint has been dealt with by BHCC can complain to the Local Authority Ombudsman. Such complaints will only be considered when BHCC's complaints procedure has been exhausted.

## **19 Variations to this Agreement**

- 19.1 This Agreement will be reviewed on a regular basis and updated as required in accordance with changes to Government guidance and relevant legislation. Any update to the Agreement will be notified to the Provider.

## **Annex: Standard Council Legal Terms**

All clauses numbering in this Annex shall be referred to as Annex Clause [Number].

### **Acknowledgment and Publicity**

- 1.1 The Provider shall acknowledge the EYFE Funding through BHCC in its annual report and accounts
- 1.2 The Provider agrees to participate in and co-operate with any activities relating to the EYFE that may be instigated and/or organised by BHCC.

### **Intellectual Property Rights**

- 1.3 BHCC and the Provider agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other Intellectual Property Rights whatsoever owned by either BHCC or the Provider before the commencement date or developed by either party during the funding period, shall remain the property of that party.
- 1.4 Where BHCC has provided the Provider with any of its Intellectual Property Rights for use in connection with EYFE (including without limitation its name and logo), the Provider shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by BHCC.

### **Confidentiality**

- 1.5 Subject to Annex Clause 0 (Freedom of Information), each party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.
- 1.6 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:
  - 1.6.1 at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
  - 1.6.2 is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
  - 1.6.3 is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the

receiving party without breach of the obligations owed by that party to the disclosing party.

### **Freedom of Information**

- 1.7 The Provider acknowledges that BHCC is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004.
- 1.8 BHCC shall be responsible for determining at its absolute discretion whether information provided under this Agreement:
  - 1.8.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004;
  - 1.8.2 is to be disclosed in response to a request for information.
- 1.9 The Provider shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit BHCC to inspect such records as requested from time to time.

### **Data Protection**

- 1.10 The Provider shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Act 2018 (DPA) and both Parties will duly observe all their obligations under the DPA, which arise in connection with this Agreement.
- 1.11 The Provider shall ensure that it has in place appropriate technical and organisational measures to ensure the security of personal data as required under the Seventh Data Protection Principle in Schedule 1 to the DPA.
- 1.12 The Provider agrees to indemnify BHCC against all costs that BHCC incurs as a consequence of the Providers failure to comply with this Annex Clause 5.

### **Equality Duty**

- 1.13 Under the Equality Act 2010 (the Act), BHCC, in carrying out its functions has a duty to pay due regard to the need to eliminate discrimination, harassment and victimisation, promote equality of opportunity and good relations between those who share a particular protected characteristic and those who do not.
- 1.14 The Provider shall not discriminate contrary to the Act (which term includes harassment and victimisation) directly or indirectly, against any person on grounds of disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, sex and sexual orientation, race, religion/belief and age.

### **Health and Safety**

The Provider shall:

- 1.15 comply at all times with the Health and Safety at Work etc. Act 1974 and all other
- 1.16 Laws relating to health and safety of employees and other affected persons including the Management of Health and Safety at Work etc Regulations 1999, and all other health, safety and welfare requirements applicable to the Services; and
- 1.17 accept primary responsibility for all aspects of health and safety at the premises of the Provider and any premises in which EYFE is delivered.



### **Provider Undertakings**

The Provider represents, undertakes and agrees that:

- 1.18 it has not committed, nor shall it commit, any Prohibited Act as defined in the Bribery Act
- 1.19 it shall at all times comply with all relevant legislation and all applicable Government guidance and code sand shall notify BHCC immediately of any significant departure from such legislation, codes or recommendations
- 1.20 it has and shall keep in place adequate systems to deal with the prevention of fraud and/or administrative malfunction
- 1.21 (all financial and other information concerning the Provider which has been disclosed to BHCC is to the best of its knowledge and belief, true and accurate
- 1.22 it is not aware of anything in its own affairs, which it has not disclosed to BHCC which might reasonably have influenced the decision of BHCC to make the Funding on the terms contained in this Agreement.

### **Duration**

- 1.23 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until expiry.
- 1.24 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

### **Assignment**

The Provider may not, without the prior written consent of BHCC, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement.

### **Waiver**

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

### **Contracts (Rights of Third Parties) Act 1999**

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

### **Entire Agreement**

This Contract constitutes the entire agreement and understanding of the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

### **Governing Law**

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

## Appendix 1: Early Years Free Entitlement (EYFE) Eligibility Information for Providers

The provider should check original copies of documentation to confirm a child has reached the relevant age on initial registration for **all Entitlements**. The provider can retain paper or digital copies of documentation to enable the local authority to carry out audits and fraud investigations. Where a provider retains a copy of documentation this must be stored securely and deleted when there is no longer a good reason to keep the data

### 1. Universal Entitlement for three and four year olds

- 1.1. All three and four year olds are eligible for 15 EYFE hours a week for 38 weeks of the year. Children may stretch their entitlement over more than 38 weeks (and up to 52 weeks). This means taking fewer hours per week, subject to a maximum of 570 hours a year
- 1.2. All three and four year olds **living** in England are entitled to the universal entitlement irrespective of their family circumstances
- 1.3. In all cases, children will be entitled to universal EYFE until they either take-up a place in a state-funded school reception class or reach compulsory school age (the beginning of the term following their fifth birthday)
- 1.4. Three year olds can start their universal EYFE from the term after their third birthday:

Child's third birthday is between	They can start their UNIVERSAL EYFE from	Term
1 Jan – 31 Mar	The beginning of term on or after 1 Apr	Summer
1 Apr – 31 Aug	The beginning of term on or after 1 Sep	Autumn
1 Sep – 31 Dec	The beginning of term on or after 1 Jan	Spring

- 1.5. Three and four year olds of eligible working parents can receive an additional 15 EYFE hours per week for 38 weeks per year – the 30 hours extended entitlement (see section 3 Working Parent Entitlements for further details)

## 2. Disadvantaged Two year old Entitlement

2.1. Some two year olds in families which receive [some additional forms of government support](#) are eligible for 15 EYFE hours a week for 38 weeks of the year. Children may stretch their entitlement over more than 38 weeks (and up to 52 weeks). This means taking fewer hours per week, subject to a maximum of 570 hours a year.

2.2. Eligible disadvantaged two year olds can start their EYFE from the term after their second birthday:

Child's second birthday is between	Disadvantaged two year funded EYFE from (with an LA issued URN)	Term
1 Jan – 31 Mar	The beginning of term on or after 1 Apr	Summer
1 Apr – 31 Aug	The beginning of term on or after 1 Sep	Autumn
1 Sep – 31 Dec	The beginning of term on or after 1 Jan	Spring

2.3. Parents should be directed to contact [BHCC Family Hubs](#) to check eligibility and apply to BHCC from the beginning of the term during which their child turns two years old. Eligibility criteria and information regarding how to apply are available here: [Free early learning for two year olds \(brighton-hove.gov.uk\)](#)

2.4. BHCC will send eligible parents a letter confirming their eligibility with a unique reference number (their 'E number'). The date indicated on the eligibility letter is the date from which the child can start their EYFE. The Provider should obtain a copy of this letter from the parent and retain a copy for its records.

2.5. Disadvantaged two year olds are eligible for their EYFE **from the date indicated on the eligibility letter**. If the child is already attending the early years setting prior to the parent receiving their eligibility letter, the EYFE payment to the Provider will not be backdated by BHCC. The Provider must make it clear to parents that they are liable for any fees until the start date on their eligibility letter from BHCC.

2.6. The Provider should offer places to disadvantaged two-year-olds on the understanding that the child **remains eligible** until they become eligible for the universal EYFE for three and four year olds, even if the child or parent ceases to meet the eligibility criteria during this time.

2.7. The Provider may be aware of some families who meet the criteria for both the disadvantaged two year old entitlement AND the working parent entitlement (see below). Families should be encouraged to apply locally through BHCC for the disadvantaged two year old funding in the first instance – the benefits of this include: no termly deadlines; a possible immediate start to their EYFE place once eligibility has been confirmed, and ongoing eligibility even if circumstances change.

### 3. Eligible Working Parent Entitlements

**(30 hours extended entitlement for three and four year olds and **NEW** 15 hour expanded entitlements for two year olds (from April 2024) and nine to 23 months (from September 2024)**

- 3.1. Eligibility criteria for the Working Parent Entitlements and information showing how parents can check and apply are available on the government's [Childcare Choices](#) website which the Provider should use to guide parents. Information can also be found on the BHCC webpage [Childcare and Childcare Funding](#)
- 3.2. A child is entitled to the eligible working parent entitlement from **the term after** both of the following conditions are satisfied (1) the child has attained the relevant age (see table below); (2) the child's parent has a current positive determination of eligibility from HMRC. i.e.. a valid HMRC code (see section 3.5)
- 3.3. From the **Effective Date**, a child will be entitled to 30 extended hours (three and four year olds) or 15 expanded hours (two year olds from April 2024; nine to 23 month olds from September 2024)

Two, three and four year olds Child DOB is between	EFFECTIVE DATE: With a valid HMRC code, a child can start their Working Parent EYFE from:	Term
1 Jan – 31 Mar	the beginning of term on or after 1 Apr	Summer
1 Apr – 31 Aug	the beginning of term on or after 1 Sep	Autumn
1 Sep – 31 Dec	the beginning of term on or after 1 Jan	Spring
nine to 23 months old from Sep 2024 Child DOB is between:	EFFECTIVE DATE: With a valid code, a child can start their Working Parent EYFE from:	Term
1 Sep 2022 - 30 Nov 2023	1 Sep 2024	Autumn
1 Dec 2023 – 31 Mar 2024	1 Jan 2025	Spring
1 Apr 2024 – 30 Jun 2024	1 Apr 2025	Summer

- 3.4. Alongside the unique 11 digit HMRC eligibility code, and original copies of documentation a provider must acquire written consent from, or on behalf of, the parent to be able to receive confirmation and future notifications from the local authority of the validity of the parent's eligibility code.
- 3.5. Once a provider has received written consent from the parent, they should verify the eligibility code in the Eligibility Checker in their on-line provider portal, this will confirm the

validity (or otherwise) of codes to allow providers to offer EYFE places for eligible children aged nine months and above.

- 3.6. If a parent has a child who will be three before the start of the following term but forgets to apply, they will have to wait until the **start of the next term** to claim their extended entitlement. BHCC cannot backdate funding claims where a parent has not applied for their code in time.
- 3.7. Children in foster care who have attained the relevant age are also eligible for the working parent entitlements providing they meet two additional criteria: that accessing EYFE childcare is consistent with the child's care plan and the foster parent is in paid work outside their fostering role. Further information is available here [Free childcare for eligible working parents for children aged from 9 months and above in foster care \(publishing.service.gov.uk\)](#) and [on the BHCC Family Services Directory](#)
- 3.8. BHCC will complete audit checks to review the validity of HMRC eligibility codes for children who qualify for the working parent entitlement at six fixed points in the year, both at half-term and at the end of term across the year. BHCC will notify the Provider where a parent is no longer eligible and inform them of the **grace period** (see below) end date. Providers can view this information in their portal and can check, at any time, the validity of any code.
- 3.9. BHCC will also check via the Eligibility Checking Service (ECS) whether codes given to BHCC providers have been checked by other local authorities and liaise to reduce the risk of a parent accessing more than the maximum entitlement per year.

### **The Grace Period**

- 3.10. A child enters the grace period when their parent(s) cease to meet the eligibility criteria for the working parent entitlements upon reconfirmation, as determined by HMRC or a First Tier Tribunal in the case of an appeal.
- 3.11. BHCC will access information about whether a child has ceased to meet the eligibility criteria and entered the grace period via the ECS and will inform the Provider. The grace period end date is automatically applied to eligibility codes.
- 3.12. BHCC will continue to fund a place for a child who enters the grace period as set out in current statutory guidance [Early education and childcare \(applies from 1 April 2024\) - GOV.UK \(www.gov.uk\)](#)
- 3.13. BHCC will notify the Provider where a parent has fallen out of eligibility and inform them of the grace period end date, following the audit check dates as set out above. It is good practice for the Provider to notify parents within five working days if they have fallen out of eligibility.

- 3.14.** Children **may not start** a working parent entitlement place at new a setting during their grace period. This includes where a parent falls into their grace period **before** the child has started their working parent entitlement place, and where a parent falls into their grace period **while** their child is in a working parent entitlement place and the parent **seeks to move** the child to a different provider. There are exceptional circumstances (e.g. the Provider closes or parent is forced to move home) where a child may be able to change providers during their grace period, as outlined in. BHCC may in those exceptional circumstances exercise its discretion by providing confirmation in a letter to the parent that they may change provider during the grace period which should be presented to the chosen new provider.
- 3.15.** If a three or four year old ceases to be eligible for the working parent entitlement and the grace period has expired, they can continue to take up their 15 hour universal entitlement, If the parent has been taking up EYFE hours at more than one provider, BHCC will continue to fund 15 hours at the provider of the parent's choice.
- 3.16.** If a two year old ceases to be eligible for the working parent entitlement, The Provider should encourage the parent to check for eligibility for the disadvantaged two year old entitlement (see above).

#### **4. Eligibility and application Information for Families**

The provider should share the following information and links with families about all the Early Years Free Entitlements and other forms of childcare support:

The government's website:	<a href="#"><u>Childcare Choices</u></a>
BHCC childcare support factsheet:	<a href="#"><u>Childcare Support is expanding in 2024 and 2025</u></a>
BHCC webpage:	<a href="#"><u>Childcare and Childcare Funding</u></a>
BHCC Family Services Directory:	<a href="#"><u>Family Service Directory</u></a>

## Appendix 2: Information for Families – Good Practice for Providers

### 1. Websites

- 1.1. Information about early years free entitlement (EYFE) should be clearly signposted from your home page either in a separate EYFE tab, or downloadable as a separate EYFE information document.
- 1.2. EYFE information may also be included in your “terms and conditions” or “parental agreement” but should also be available separately to parents and prospective parents visiting your website.
- 1.3. If you do not have a website this information should be available to parents and prospective parents on a EYFE document which can be emailed upon request.

### 2. EYFE Offer Information on Website or Information Document/ Funding Policy

#### This should include

- 2.1. **General information and links about what EYFE/funded hours are and who is eligible for example:**

*All three and four year olds are, from the term after their third birthday, eligible for early years free entitlement (EYFE) funded hours 15 hours a week for 38 weeks per year (term-time only) or if the child attends year round, 570 hours stretched over the year. Some three and four year olds are eligible for up to 30 funded hours a week (term-time only) 1140 stretched over the year, this is the ‘**working parent entitlement**’.*

*Some two year olds, whose families are [in receipt of government support](#) are eligible for 15 EYFE funded hours per week term-time only (or 570 stretched over the year), they can apply locally for this here: [Childcare support for 2 year olds \(brighton-hove.gov.uk\)](http://brighton-hove.gov.uk)*

*The government is currently expanding the working parent entitlement; from April 2024 some two year olds will be eligible for 15 hours term time only (570 stretched) and from September 2024 this will extend to eligible children from the term after they are nine months old.*

*For further information, eligibility criteria and how to apply go to the government’s [Childcare Choices website](#)”*

- 2.2. **Clear information about:**

- how you offer EYFE at your setting, for example term-time only; xx hours stretched over xx number of weeks or both
- how parents/carers can access EYFE hours without having to pay for additional hours and services i.e. your ‘stand-alone offer’, and what, if any, restrictions you set on this, for example by time of the day/week; or the number of places available; any other ‘admissions criteria’ you may set

- how parents/carers can access EYFE alongside additional paid for hours, that is how you apply EYFE hours to a child's weekly attendance, for example if EYFE hours are applied 'up front' and families pay for hours after maximum EYFE has been applied; or you set a maximum number of EYFE hours per session
- your charges for non-funded hours/part funded sessions, and for non-funded items such as meals, snacks, consumables and/or additional services extras such as trips, yoga or music classes
- your notice period
- deposits, including when they will be refunded

### **3. Invoices**

#### 3.1. Invoices should be clear and itemised

- Charges for non-funded hours or sessions are a matter for you to decide, but invoices which include both EYFE and non-funded hours should clearly show parents/carers they have been charged only for non-funded hours and items and not for EYFE hours.
- Parents/carers should be shown the number of EYFE funded hours their child has had for the invoiced period (week/month) at a 0.00 cost. EYFE must not be represented to the parent/carer as a monetary value or subsidy to standard fees

#### 3.2. Invoices should include:

- the word "INVOICE"
- an invoice number (a unique reference number)
- the date
- your business/setting's name, address and contact details
- the name and address of the parent/carer being invoiced
- a clear description of what you are charging for
- the period the childcare relates to
- the child's name
- the number of contracted hours/sessions
- the number of EYFE hours received for the period (without a monetary value)
- additional services received
- hourly/sessional rates for non-funded hours
- the total amount to be paid
- the registration number and the registered office if your business is a registered limited company
- other information for example payment details (terms, bank account details, method of payment and due date)



### Appendix 3: EYFE Parental Declaration Form

Setting Name

To be completed by parent/carer of a child eligible for Early Years Free Entitlement (EYFE) when the child starts their EYFE.

#### 1. Child & Parent/ Carer Details

<b>Child's Legal Family Name:</b>											
<b>Child's Legal Forename(s):</b>											
<b>Name by which the child is known</b> (if different from above)											
<b>Child's Date of Birth</b>		<b>D</b>	<b>D</b>	<b>M</b>	<b>M</b>	<b>Y</b>	<b>Y</b>	<b>Gender</b>			
<b>Proof of DoB Type</b> (Birth certificate, Passport):							<b>Recorded by: (staff member &amp; date recorded)</b>				
<b>2 Year Funding E number:</b> (disadvantaged 2 year olds, B&H no. is 5 digits)		<b>11 digit HMRC Eligibility Code:</b> (if applicable) (eg.50012345678)									
<b>E:</b>											
<b>Parent/ Carer one</b>					<b>Parent/ Carer two</b>						
<b>Legal Family Name:</b>							<b>Legal Family Name:</b>				
<b>Legal Forename:</b>							<b>Legal Forename:</b>				
<b>Parental DOB</b>							<b>Parental DOB</b>				
<b>NI or NASS number</b>											
<b>Child's home Address:</b>									<b>Postcode</b>		
<b>Child's Ethnic Origin (please tick)</b>											
<b>White</b>						<b>Asian / Asian British</b>					
English/Welsh/Scottish/Northern Irish						Indian					
Irish						Pakistani					
Gypsy or Irish Traveller						Bangladeshi					
Any other white background please describe						Chinese					
<b>Black or Black British</b>						Any other Asian background, please describe					
Black Caribbean						<b>Mixed / Multiple ethnic group</b>					
Black African						White and Black Caribbean					
Other Black						White and Asian					
Any other Black/ Caribbean background, please describe						White and Black African					
						Any other mixed/multiple ethnic background, please describe					
<b>Other</b>											
Arab											
Other ethnic group please describe											

## 2. Setting and Attendance details

- You need to agree and complete a Declaration Form with **each setting** your child attends for their EYFE in order to ensure that funding is paid fairly between them.
- Your child can attend a maximum of two sites in a single day and if your child attends more than one setting we will distribute the funding appropriately between the settings.
- If your child is eligible for the extended 30 hour entitlement and is splitting this between more than one setting, please indicate in the table below where your child is having their universal ('15 hour') entitlement as setting A, and the extended entitlement as setting B

**My child is attending the following setting or settings:**

Setting Name(s) If <b>splitting</b> between more than one setting, please indicate below where your child is having their <b>universal</b> entitlement as <b>setting A</b> , and the <b>extended entitlement</b> as <b>setting B</b>		Please enter the total EYFE hours attended per day					Total number of EYFE hours per week	Number of EYFE weeks per year (e.g. 38, 48, 50, 51,52)
		MON	TUES	WED	THUR	FRI		
A								
B								
<b>Total <u>daily</u> EYFE hours attended</b>								
Start date of EYFE at setting A	<b>D</b>	<b>D</b>	<b>M</b>	<b>M</b>	<b>Y</b>	<b>Y</b>		
Start date of EYFE at setting B	<b>D</b>	<b>D</b>	<b>M</b>	<b>M</b>	<b>Y</b>	<b>Y</b>		

## 3. Early Years Pupil Premium (EYPP)

Additional funding may be available through the Early Years Pupil Premium (EYPP), paid to providers for the provision of extra support for children of families in receipt of certain benefits and children who are looked after or have left the care of the local authority through adoption or special guardianship. EYPP is used to improve teaching and learning facilities and resources so as to impact positively on your child's progress and development. For more information please speak to your childcare provider.

<ul style="list-style-type: none"> <li><b>I wish my childcare provider to claim EYPP for my child</b></li> <li><b>I confirm my agreement for them to use information supplied by me on this form</b></li> <li><b>I will provide evidence of eligibility where necessary, e.g. copy of the adoption certificate or a copy of the special guardianship/residence order</b></li> </ul>	
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**4. Disability Access Fund (DAF) Declaration**

If your child is receiving [Disability Living Allowance \(DLA\)](#) and is receiving EYFE he or she is eligible for the Disability Access Fund (DAF). DAF is paid to your child’s early years provider. The purpose of DAF is to support providers to make reasonable adjustments and build the capacity of their setting to support children with disabilities.

<b>Is your child eligible for and in receipt of Disability Living Allowance (DLA)?</b>	<b>Yes</b>		<b>No</b>	
<b>If your child is splitting their EYFE across two or more providers please nominate the setting where you would like the local authority to pay the DAF</b>				

**5. Parent/Carer/Guardian with legal responsibility declaration:**

**Declaration: (name)** .....

**Of (address)** .....

**I confirm that the information I have provided above is accurate and true. I understand and agree to the conditions set out in this document and I authorise the early years/childcare setting named at the beginning of this declaration to claim EYFE funding as agreed above on behalf of my child.**

**I understand that Brighton & Hove city council will check the information I provide with neighbouring local authorities to check that I am not over-claiming EYFE for my child**

- I agree that the information I have provided can be shared with Brighton & Hove City Council (BHCC) and Department for Education (DfE), who will access information from other government departments to confirm my child’s eligibility for the working parent entitlements and enable this early years/childcare setting to claim Early Years Pupil Premium (EYPP) or Disability Access Fund (DAF) on behalf of my child.
- I understand that their EYFE is a maximum of 15 (or 30 if eligible) hours a week, 38 weeks a year.
- I understand that the EYFE may be stretched across the whole year for a total of 570 (or 1140 if eligible) hours. If my child’s EYFE is stretched this will be for more than 38 weeks a year but for fewer than 15 (or 30 if eligible) hours a week.
- I understand that if my child attends more than one childcare setting (including a maintained school nursery class) their EYFE hours cannot exceed 570 (or 1140 if eligible) hours a year.
- I understand that if my child leaves their early years/childcare setting I must give the setting notice as required by their notice policy, and that I may be charged by the provider if I do not.
- I understand that this form will be made available by my early years/childcare setting to Brighton & Hove City Council (BHCC) upon request.
- I understand that I will have to complete a change of attendance form if my child’s EYFE hours vary from those outlined on this form.

Parent/Carer/Guardian with legal responsibility		Childcare Provider	
Signed		Signed	
Print name		Print name	
Date		Date	

## **Privacy Notice**

Brighton & Hove City Council is the data controller for purposes of the Data Protection Act (2018) and the General Data Protection Regulation (EU) 2016/679 ('GDPR') and is registered as a data controller with the Information Commissioner's Office (ICO).

Brighton & Hove City Council is committed to protecting your personal information. As a data controller we have a responsibility to make sure you know why and how your personal information is being collected in accordance with relevant data protection law.

## **Purposes and Lawful Basis of Processing**

We are collecting your data for the purpose of

- checking your eligibility for the early years free entitlements
- enabling us to pay your early years provider for their provision of the early years free entitlement for your child, including any supplementary entitlements
- supporting your child's teaching and learning
- monitoring early years and childcare provision

We have a lawful basis for processing this data as we have a legal obligation under the Childcare Acts 2006 and 2016 (as amended).

We will process special category data regarding your child's ethnicity, disability (where applicable) and this will be done on the basis of Substantial Public Interest: processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued. Data may be used in accordance with the Equality Act 2010.

## **Who we will Share your Data with**

Your data may be shared with Brighton & Hove City Council's departments of Families, Children and Learning, and Finance and Resources in order to process data as outlined above. It will also be shared with the Department for Education as a requirement of their annual census collection.

The council operates shared services with Surrey County Council and East Sussex County Council, and may share your information with one of these partners if necessary to provide these services.

## **How Long we will Hold your Data (Retention)**

We will hold your data for six years following the term after your child's fifth birthday

## **Transferring Data outside the European Economic Area**

Your information is not processed outside the European Economic Area.

## **Your Information Rights**

Under GDPR you have certain rights concerning your information. For further information on your rights visit [our website](#).

## **Further information**

If you would like to discuss this further please contact our Information Governance Team on 01273 295959 or [data.protection@brighton-hove.gov.uk](mailto:data.protection@brighton-hove.gov.uk)

The council also has a Data Protection Officer, who can be contacted via:

<https://www.brighton-hove.gov.uk/dpo>

You can also contact the ICO for further information or to make a complaint:

Information Commissioner's Office

Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

Phone: 0303 123 1113 (local rate) or 01625 545 745 if you prefer to use a national rate number

[Email ICO](#)

[Report a concern on the ICO website](#)