

## Commissioner Decision Report

22<sup>nd</sup> May 2015



**Report of:** Robert McCulloch-Graham, Corporate Director  
ESCW

**Classification:**  
Unrestricted

### Approvals process for Early Years Service Grant Funding, including:

- **EYS Development Grant**
- **Inclusion Funding**
- **Childminder Grants**
- **Training Grants**
- **Special Project Funding**

<b>Originating Officer(s)</b>	Jo Green
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Community Plan Theme</b>	A Prosperous Community

### Executive Summary

The Early Years Service operates a number of grant funding programmes to support childcare provision within Tower Hamlets. These awards are non-statutory, but do work towards supporting national targets or statutory obligations.

#### a) EYS Development Grant

Provides the financial resource to allow childcare providers both existing and new to maximise the quality of their childcare provision.

#### b) Inclusion Funding

Supports access and inclusion of children with significant additional needs (Special Educational Needs) by supporting childcare providers in funding: additional focused support; specific equipment and/ or adaptations to the environment within the setting.

#### c) Childminder Grants

Start-up grant to new childminders offers support to local residents in starting up a childminding business by providing the initial paper work, public liability insurance.

#### d) Training Grants

Supports those employed in the Private Voluntary and Independent (PVI) Early Years workforce to achieve a higher level childcare related qualification to improve the quality of childcare and early education provision in the borough.

### **e) Special Project Funding**

The Early Years Service undertakes several special projects a year to concentrate on areas of work to support development in childcare provision and which relate to key objectives in the team plan. Grants may be awarded to childcare providers to enable them to participate in the projects.

### **f) Early Years Sector Support (ex-MSG)**

This refers to a block of funding agreed by Schools Forum and which was previously part of the Mainstream Grants programme; in the future services will be commissioned for infrastructure support for childcare provision and essential early years sector activities that cannot be provided from elsewhere. Approval is being sought for the extension of current funding while the commissioning process is being developed. The requested extension is up to the end of December 2015

### **Recommendations:**

The Commissioners are recommended to:

1. Agree the operation of the five grant schemes outlined in the report, namely: EYS Development Grant; Inclusion Funding; Childminder Grants; Training Grants; Special Project Funding; and Early Years Sector Support.
2. Authorise the Service Head Learning and Achievement to award grants under the schemes in accordance with the processes set out in this report.
3. Agree that the authority may enter into agreements to give effect to that the scheme and any grants awarded.
4. Agree that a report should be provided to the Commissioners on a quarterly basis with details of the awards made.

### **1. REASONS FOR THE DECISIONS**

The Local Authority is allocated funding from central government to support childcare providers in maximising the quality of their provision; in supporting the access and inclusion of children with significant additional needs.

### **2. ALTERNATIVE OPTIONS**

- 2.1 An alternative option is to do nothing. However, it is very possible in that case that the Local authority will not meet certain statutory duties.

Duties set out in the *Early Education and Childcare – Statutory Guidance for Local Authorities*, Department for Education September 2014, include:

- Ensuring all children are able to take up their entitlement to funded early

- education in a high quality childcare setting
- Securing sufficient childcare to ensure that parents are able to work because childcare places are available, accessible and affordable and are delivered flexibly in a range of high quality providers
- Providing information, advice, guidance and training for childcare providers to improve the quality of their provision and to promote high quality early education.

The *Special educational needs and disability code of practice:0-25 July 2014*, and *Equality Act 2010* include duties to:

- Support access and inclusion of children with significant additional needs (Special Educational Needs)

### 3. DETAILS OF REPORT

#### 3.1 Purpose of Proposed Funding

##### 3.1.1 EYS Development Grants

Provides the financial resource to allow childcare providers to maximise the quality of their childcare provision; specifically, the programme focuses on:

- Supporting existing childcare providers in making significant improvements to the quality of their provision in line with action points from Ofsted Inspection Reports and recommendations of the Early Years Service.
- Supporting new childcare providers in maximising the quality of their childcare provision from their launch.

##### 3.1.2 Inclusion Funding

Supports the access and inclusion of children with significant additional needs (Special Educational Needs) by supporting childcare providers in funding:

- **Additional focused support:** funded support to enhance the capacity of the Key person and wider permanent staff group to meet the child's needs through the provision of an additional suitably qualified (NVQ Level 3) early years practitioner.
- **Specific equipment:** to enable the setting to purchase specific equipment to support the child's access to play and learning opportunities. For example wedges for children with physical needs.
- **Adaptations to the environment:** to enable the setting to fund small adaptations to the physical environment to enable access for the child, for example grab rails, ramps.

### 3.1.3 Childminder Grants

This funding is to support people living in Tower Hamlets in setting up as a registered Childminder. This encourages formal, high quality childcare that is registered with Ofsted and is supported by the LA. All grant recipients are supported to:

- raise standards above the basic registration requirements
- offer high quality childcare and education to early years and older years children
- to self-evaluate their practices
- help give parents confidence in using childminders as a childcare option.

The funding covers the necessary business pack to get started and meet the legal requirements of the Early Years Foundation Stage Framework and business practices. The start-up pack purchased through a recognised organisation supporting childminders includes the necessary paperwork (contracts, children's records, safeguarding records, registers, accidents book, and financial records). In addition, it covers one year's personal liability insurance and a fire blanket.

### 3.1.4 Training Grants

Supports those employed in the PVI Early Years workforce in Tower Hamlets to achieve a higher-level childcare related qualification.

- **GCSE Maths and English**  
Level 2 practitioners who do not hold GCSEs in English and maths at grade C or above cannot progress to achieve a childcare Level 3 qualification. This funding is to support their professional development as a pathway to a higher qualification level,
- **Level 3**  
Progression funding for level 2 practitioners to undertake and achieve the Level 3 Early Years Educator (EYE) qualification. Research shows childcare settings (group based provision) which have staff with higher qualifications, show higher quality and their children make more progress.

The Nutbrown Review (*Foundations for Quality - The independent review of early education and childcare qualifications*, June 2012) notes that we need a rigorous set of qualifications in place to ensure a competent and confident workforce. The Level 3 qualifications should become the minimum standard for the workforce, and therefore Early Years Foundation Stage (EYFS) requirements should be changed so that all staff, including those childminders who work with the EYFS framework, should be qualified at a minimum 'full and relevant' Level 3 by September 2022.

The review also stated, to support the transition towards this requirement, the recommendations was that from Sept 2013, 50 per cent of staff in

group settings will need to possess at least a Level 3 qualification, and then from September 2015 this should increase to 70 per cent of staff.

- **Early Years Degree**

Progression funding for to increase the number of degree level qualified practitioners, in line with the findings of the *The Effective Provision of Pre-School Education* (EPPE) project and Nutbrown review. These studies promote the progression of those who hold a Level 3 to a degree level course.

Nutbrown states that the evidence also suggests that those with higher levels of qualification – degree level specialism in early childhood – have the greatest impact. Research has shown that there are large benefits that graduate leaders and, in particular, qualified teachers bring to early years providers. They have positive impacts both in terms of curriculum and pedagogical leadership, and in terms of measurable improvement in children's outcomes in early literacy, social development, mathematics and science. There are many examples, too, of teachers working with other professionals in the arts to provide children with rich arts-based learning experiences, thus fostering children's creativity and imagination.

### **3.1.5 Special Project Funding**

The Early Years Service undertakes several special projects a year to concentrate on areas of work to support development in childcare provision. The projects concentrate on innovative approaches to improving quality.

Projects fit into two broad categories: either providers facing challenges or providers becoming beacons,

The budget for each project is normally up to £30-40,000. Sometimes there is external funding for this work. The majority of the funding is spent through the procurement process. However, to enable providers to participate in the projects grants of up to a maximum of £5,000 per project may be awarded. The providers are required as a condition of grant to share knowledge and experience gained through the project with other providers.

## **3.2 Application Process**

### **3.2.1 EYS Development Grants**

- The grant is advertised through the following means:
  - in the termly Training Directory which is sent to all providers in Tower Hamlets
  - at the termly forum for provider managers
  - by EYS development officers in one-to-one meetings with childcare providers

- Generally, the starting point for an application for EYS Development Grant Funding is a discussion between the childcare provider and their allocated EYS development officer(s) on how the quality of childcare provision could be enhanced and looking at action points from the provider's Ofsted inspection report. If there is a significant one-off purchase that could enhance the quality of childcare provision and potentially be funded through the EYS Development Grant programme, then the childcare provider is supported in applying for EYS Development Grant funding.
- All applications for EYS Development Grant funding are developed by childcare providers in conjunction with Early Years Service development officers and applications are signed by the appropriate development officer to indicate their agreement to the purpose for which funding is being sought.
- EYS Development Grant funding is available to childcare providers from the private, voluntary and independent sector only. Childminders are also permitted to apply for EYS Development Grant funding subject to the programme criteria. However, childminders are not awarded grants for anything that could be seen as home improvement.
- Applicants are encouraged to focus applications for funding on significant one-off purchases and are expected to make a significant contribution (up to 50% of the project costs). The actual percentage contribution to be made by the childcare provider is calculated after a review of the childcare provider's financial position based on a review of its most recent audited accounts, usually the last 3 years' audited accounts.
- Once a funding award has been recommended a Grant Agreement is developed and signed by the childcare provider and then sent to the Service Head for Learning and Achievement for approval.
- Childcare providers who have been awarded EYS Development Grant Funding must keep receipts and invoices as evidence of project expenditure.

### **3.2.2 Inclusion Funding**

- The grant is advertised through the following means:
  - in the termly Training Directory which is sent to all providers in Tower Hamlets
  - at the termly forum for provider managers
  - by EYS Inclusion Officers in one-to-one meetings with childcare providers
- When a childcare setting from the private, voluntary or independent sector demonstrates they have a child with significant additional needs who

requires funded support, specific equipment or adaptations to be made to the setting's environment, they are able to apply for Inclusion Funding. This funding is specifically for early years settings although childminders will be considered for equipment or adaptations to the environment such as a ramp or handrail to support access for children with identified needs. The evidence that can be used to demonstrate a child's needs includes reports from one or more of the following:

- Speech and Language Therapist
  - Area Inclusion Coordinator
  - Educational Psychologist
  - Child Development Team
  - Physiotherapist
  - Occupational Therapist
  - Health Visitor
  - Common Assessment Framework
  - Social Care Team
  - Hospital Consultant
  - Child and Adolescent Mental Health Service
  - Autistic Spectrum Disorder Assessment Service
- In order to be able to access Inclusion Funding to support the access and inclusion of a child with significant additional needs, the following process is followed:
    - Child's needs identified
    - Planning in place to address child's needs
    - Application discussed with parents and agreed
    - Appropriate services accessed to support planning for the child's needs
    - Request for grant discussed with the LA's Area Inclusion Coordinator
  - An Inclusion Panel meets to assess the evidence and make recommendations for the award of funding. The Inclusion Panel comprises: Senior Area Inclusion Coordinator plus two Area Inclusion Coordinators.
  - Proposed funding awards from the Inclusion Panel are then sent to the Early Years Grants Panel for recommendation and then to the Service Head Learning and Achievement for approval.
  - Childcare providers awarded an Inclusion Grant must keep receipts and invoices as evidence of expenditure.

### 3.2.3 Childminder Grants

- The information about the availability of the grant is provided at:

- the Family Information Service
  - at termly advice surgeries held at all children centres.
  - at monthly information sessions for those interested in becoming a registered childminder.
- When the Early Years Service is contacted by interested parties they are informed of and if wanted booked on the next information sessions.
  - The information is repeated on the 10-week (one day per week) training course. This training is compulsory and gives an accredited unit to the Level 3 Award in Preparing to Work in Home-Based Childcare, paediatric first aid and safeguarding training. This is currently funded by the LA.
  - Once registered childminders are contacted and visited by the Childminding Co-ordinator, who will discuss the grant and complete the relevant forms This allows the coordinator to check the understanding of the childminder in commencing work and ensures all requirements are in place.
  - The resources are sent direct to the childminder.
  - Childminders wanting to receive the grant and join the network but not at the relevant level to undertake the requirements of the quality assurance scheme are awarded the funding and supported to raise their quality through regulatory support visits and training.

### **3.2.4 Training Grants**

Training grants are advertised through the following means:

- the termly learning and development brochure, which is sent to all registered providers in Tower Hamlets providing care and education places to children birth to five
- promoted at the termly forum for LBTH PVI childcare managers
- EYS Officers in one-to-one meetings with childcare providers

Training grants are awarded using the following process:

- The applicant (PVI childcare employer) will identify staff wanting to progress in to higher-level
- The applicant will submit a request for funding detailing the learners' current qualification level, experience, commitment to their employer.
- The applicant will also be required to detail how the business is working towards improving on or maintaining their current Ofsted grading, and how the qualification will improve the quality of provision.
- The application will be initially reviewed by the Early Years Workforce Development Manager, and may be, rejected if key objective requirements are not met, deferred requiring more information, or sent to the Early Years Grants Panel for recommendation.

### **3.2.5 Special Project Funding**

All settings that meet the basic criteria of the specific project are invited to participate in the project.

If there are more applicants than are required or that funding allows, settings are asked to demonstrate the capacity to undertake the project, how their setting will benefit from participating and how they will share their learning with others.

In practice, the number of settings wishing to participate in each project is relatively small, given the time commitment involved is significant.

### **3.2.6 Early Years Sector Support (ex-MSG)**

Approval is also being sought for an extension to the MSG roll-over due to delay in decision on services Schools Forum wishes to commission in the future.

This approval would be for a general extension to all current services until a decision is made on which services are to be commissioned in the future, and for a further extension for specific services which are required until the commissioning process is completed. It is anticipated that the commissioning process will be completed by the end of December 2015.

### **3.2.7 Approval process for grants**

Initially, all applications are processed by the relevant team within the Early Years Service. When the application process is complete, the papers are sent to the Early Years Funding Panel, which meets at least termly. The role of the panel is to provide an objective assessment of the application and to make recommendation for funding where it finds that an applicant meets the specific grant criteria. The recommendations are then sent to the Service Head Learning and Achievement for approval.

For the Early Years Sector Support (ex-MSG), the funded projects were approved as part of the 2012-15 Mainstream Grant programme, this proposal represents a continuation of the previously approved projects.

## **3.3 Grant criteria**

### **3.3.1 EYS Development Grants**

Applications for EYS Development Grant funding are considered against the following criteria:

- The childcare provider's most recent Ofsted grading and any issues raised and/ or recommendations to improve the quality of childcare provision made by the inspection visit/ report.
- The childcare provider's priority level and issues raised/ recommendations made to improve the quality of childcare provision through the Settings Review process. The Early Years Service Settings

Review process reviews the quality and support needed of childcare provision across all settings within the borough; depending on the level of development support judged to be required, each setting is rated as being high, medium or low priority.

- Findings, actions and recommendations to improve the quality of childcare provision identified in the childcare provider's ECERS/ ITERS audits.
- The purpose for which funding is being sought and how this would help the provider in addressing issues, actions or recommendations identified by OFSTED, Settings Review, ECERS/ ITERS or through the ongoing work with EYS development officer(s).
- The childcare provider's financial position based on analysis of its most recent audited accounts. The childcare provider's financial position is reviewed in terms of: ongoing surplus/ deficit of income against expenditure; reserve funds held, most specifically unrestricted funding to contribute to the proposed development and forward income and expenditure projections demonstrating the financial sustainability of the childcare provision.
- Details of the projected expenditure and how this will be funded; whether the provider is proposing to make a contribution from their own resources. Childcare providers are expected to contribute 50% of the total project costs unless they can demonstrate that they do not have sufficient financial resources available. For new childcare provision consideration is given to the total investment made towards start-up costs by the childcare provider.
- The financial viability/ sustainability of the childcare provider- based on 3-year income and expenditure projections.
- The nature of the proposed expenditure with applications for funding expected to focus on significant, one-off purchases or developments that will have a clear impact on improving the quality of childcare provision
- Awards are generally made only for significant one-off purchases that will lead to a significant improvement in the quality of the childcare provision and will make a real difference to children care and learning; such as: purchase of large pieces of play equipment, development of the setting's outdoor play facilities, improvements to the settings physical environment, the development of Forest School facilities, etc. Applications for funding focusing on smaller scale purchases (e.g. smaller items of play equipment, storage facilities, consumable resources etc.) would only be considered for new start-up childcare providers who have not yet established sufficient financial reserves to fund these items themselves.

### **3.3.2 Inclusion Funding**

- In order for Inclusion funding to be awarded, the childcare setting must demonstrate that they have a child with significant additional needs who requires funded support, specific equipment or adaptations to be made to the setting's environment. The individual child's needs could be:
  - Communication and interaction needs
  - Sensory (hearing, vision) needs
  - Physical needs
  - Medical needs
  - Social, emotional and mental health needs
- There must be supporting evidence from a relevant professional involved in the case (see section 3.2.2 above).

Inclusion Funding is awarded to support the access and inclusion of children with significant additional needs; for example funding an additional suitably qualified early years practitioner so that the wider permanent staff group is better able to meet the needs of the individual child; the purchase of specific equipment to support the child's access to play and learning opportunities; or to enable small adaptations to the physical environment within the setting to enable access for the child.

### **3.3.3 Childminder Grants**

This funding is to encourage and support local people in setting up as a registered Childminder. To be eligible:

- The grant must be applied for within 6 months of becoming registered with Ofsted.
- The childminder has a choice of taking up the start-up pack through a specialist organisation offering business support and insurance for childminders.

### **3.3.4 Training Grants**

Applications are considered against the following criteria:

- Applicants must be employed in a childcare capacity in the PVI childcare sector and with a provider based in the London Borough of Tower Hamlets.
- The provider must be registered with Ofsted and must have an Ofsted rating of requires improvement/satisfactory or better.
- Settings must be providing care/education to a minimum of 50% of their registered childcare places, settings in the first year of operation are exempt from this to support future development.

- Funding will only be considered as a progression to achieve a higher qualification level and the training must be relevant to the field of early years childcare.
- Grants will not be awarded by the Early Years Service if the individual or organisation has received any other external funding for the training
- Grants for GCSEs and Level 3 qualification is only for the cost of the training itself, and does not include cover costs, books or any other associated costs incurred.
- Early Years Degree grants are funded based on the university tuition fees up to a maximum of £9,000 per annum, to a total of £27,000 for the complete course. Funding will be paid over a maximum of five years. Up to an additional £1,500 per annum (up to a maximum of £4,500 over the complete period of study) may be claimed for actual costs incurred for travelling to and from lectures, staff cover and resources to support the learner.
- Funding will only be released on receipt of a copy of an invoice relating to the agreed course and in the same financial year as the course start date; failure to this may result in the grant not being paid. For the additional costs payment will only be made on production of receipts or invoices.
- Maximum number of funded places per provider is dependent on the number of employed childcare staff and those currently receiving funding.

Size of ratio workforce employed	Early Year Graduate funding Number of funded people at any one time	Level 3 and GCSE funding Number of funded people at any one time
1 - 5	1	2
6 – 10	1	3
11 - 20	2	4
21 +	3	6

### 3.3.5 Special Project Funding

- Providers must be able to deliver childcare relating to the objective of the project e.g. supporting two year olds, developing outdoor areas.
- The provider must be from the appropriate sector for the project i.e. school or PVI.
- For projects for settings facing challenges, the setting must be rated requires improvement/satisfactory or above.
- For beacon projects, providers must be rated good or outstanding by Ofsted.

### 3.3.6 Early Years Sector Support (ex-MSG)

The principle criteria are for areas of work that meet council objectives as set out in the Community Plan 2012-2015, the Strategic Plan 2015/16 and the Children & Families Plan 2012-15.

#### **Strategic Plan 2015/16 – A Prosperous Community**

- Improve educational aspiration and attainment
  - Expand free early years education places of high quality for disadvantaged two year-olds
  - Raise attainment of all children at the end of the Early Years Foundation Stage and narrow the gap between all children and those that receive Pupil Premium

#### **Community Plan – A Fair and Prosperous Community**

- Enable children and young people to achieve their full potential
  - Deliver ambitious targets for expansion of childcare provision
- Build strong community leadership and social capital through a thriving voluntary and community sector (VCS)
  - VCS shape strategy and services and coproduce local services
  - VCS resilience and financial sustainability
  - Monitor, evaluate and demonstrate impact

#### **Community Plan – A healthy and supportive community**

- Ensure a healthy start for every child
  - Ensure that all children are physically, emotionally, behaviourally and cognitively ready for school

#### **Children & Families Plan 2012-15**

- Maternity and Early Years Children are Healthy
  - All parents and children achieve positive physical and emotional development milestones

The types of project which have previously been funded through MSG included: payroll services and management committee support for voluntary childcare providers; toy library services; and childcare support for children with complex additional needs.

### 3.4 Eligibility

Early Years Service grant funding is only awarded to eligible childcare providers; a childcare provider is considered to be eligible if:

- The childcare provision is registered with Ofsted;
- they meet the Ofsted rating of requires improvement/satisfactory or better, or, where specified in the grant criteria, of good or better

- the childcare provider can show how they will meet the Early Years Foundation Stage
- the childcare provision is located within the London Borough of Tower Hamlets.
- The provider is administering any other funding received through LBTH in accordance within the terms and conditions of that funding.

### **3.5 Award amount and payment**

For all grants, providers must be able to provide evidence of expenditure which meets the conditions of the award.

#### **3.5.1 EYS Development Grants**

- The EYS Development Grant budget is £43,693 per year with individual awards limited to a maximum of £5,000; there is also the expectation that the childcare provider makes a significant financial contribution themselves (up to 50% of the total project costs). Examples of recent EYS Development Grant awards include: £2,000 towards the development of a childcare provider's outdoor play area; £3,000 towards the purchase and installation of outdoor storage facilities and a climbing frame; £1,000 towards the purchase of a new changing unit; £1,500 towards the replacement of a heating system.
- The EYS Development Grant is awarded on a first come, first served basis from the beginning of each financial year; usually there is sufficient funding available to fund all applications recommended for funding. If funding were to run out over the course of the year applicants would be encouraged either to seek alternative sources of funding or consider reapplying the following year.
- Any award amount is based on consideration of:
  - the potential positive impact of the funding on improving the quality of childcare provision; established through the identification of development actions by EYS development officer(s) and the childcare provider.
  - the financial contribution being made by the childcare provider themselves; childcare providers are expected to contribute 50% of the total project costs unless they can demonstrate that they do not have sufficient financial resources available. For new childcare provision consideration is given to the total investment towards start-up costs by the childcare provider.
  - value for money in terms of the costs of specific items of equipment and/ or resources to be funded; value for money is assessed based on the experience of EYS development officers who have a broad knowledge of early years equipment and the relative quality and cost.

- Applications for funding are benchmarked against each other based on the experience and professional judgement of EYS development officers in order to ensure fairness of awards.
- A grant agreement is drawn up for each funding award detailing the agreed purchases to be made and the financial contribution to be made by the childcare provider.

### **3.5.2 Inclusion Funding**

- The Inclusion Funding budget is £43,500 per year with typical awards ranging from £500 up to £4,000, depending on the nature of support needed. A typical award would be employment of NVQ Level 3 qualified early years practitioner for a period of 12 weeks for 15 hours a week at a rate of £12.18 per hour at a total cost of £2,192.40.
- Any award amount is based on consideration of:
  - the needs of the individual child in terms of supporting access and inclusion of children with significant additional needs
  - the setting demonstrating they have a child with significant additional needs who requires funded support, specific equipment or adaptations to be made to the setting's environment
- Applications for funding are benchmarked against each other based previous awards and on the experience and professional judgement of the Inclusion Panel in order to ensure fairness of awards.

### **3.5.3 Childminder Grants**

The grant is paid directly to the specialist childminder organisation in the name of the childminder. This grant is a fixed amount of £150.

### **3.5.4 Training Grants**

Funding will differ depending on the qualification level and type. Grants will be awarded on a match funding basis.

- GCSE Maths and English – up to a maximum of £300 per learner.
- Level 3 – up to a maximum of £3,000 per learner.
- Early Years Degree grants are funded based on the university tuition fees up to a maximum of £9,000 per annum for three years. Up to an additional £1,500 per annum may be claimed for actual costs incurred for travelling to and from lectures, staff cover and resources to support the learner.

### **3.5.5 Special Project Funding**

- No more than £5,000 per project and not more than a total of £10,000 per year may be awarded to a single provider.

- Funding is only awarded for actual costs incurred up to the above limits which enable the provider to participate in the project.

### 3.5.6 **Early Years Sector Support (ex-MSG)**

The annual budget for the extension of MSG projects is £185,712 which was agreed by Schools Forum as part of the DSG budget for 2015/16.

## **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1. The grants contained in this report are funded from the Early Years element of the Dedicated Schools Grant (DSG). The DSG budget is approved by the Tower Hamlets Schools Forum on a yearly basis. The 2015/16 budget was approved by Schools Forum in January 2015, each of the grants mentioned in this report are budgeted for within the Early Years element of the DSG in 2015/16.

## **5. LEGAL COMMENTS**

- 5.1. The power of the commissioners to make decisions in relation to grants arises from directions made by the Secretary of State on 17 December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the Directions). Paragraph 4(ii) and Annex B of the Directions together provide that, until 31 March 2017, the Council's functions in relation to grants will be exercised by appointed Commissioners, acting jointly or severally. This is subject to an exception in relation to grants made under section 24 of the Housing Grants, Construction and Regeneration Act 1996, for the purposes of section 23 of that Act (disabled facilities grant).
- 5.2. To the extent that the Commissioners are exercising powers which would otherwise have been the Council's, there is a need to ensure the Council has power to make the grants in question. The Commissioners will wish to be satisfied that this is the case. It appears from the information provided in the report that the grants are capable of being supported under the Council's powers and, in this regard, the powers set out below appear particularly relevant.
- 5.3. The grant schemes outlined in the report are concerned with: maximising the quality of childcare provision; supporting access for children with special educational needs to childcare; start-up support for child minders; and training those involved in childcare. The scheme may be supportable by reference to the Council's obligations under the Childcare Act 2006, which relevantly include the following –
- to improve the well-being of young children in Tower Hamlets and to reduce inequalities between young children in specified respects (which include education, training and recreation) (section 1(1));

- to make arrangements to secure that early childhood services in Tower Hamlets (which include early years provision) are provided in an integrated manner which is calculated to facilitate access to services and maximize the benefit of those services to parents, prospective parents and young children (section 3(2)). Early childhood services include early years' provision, which is childcare for the under-fives.
  - to secure, as far as reasonably practicable, that there is sufficient childcare provided in Tower Hamlets to meet the relevant needs of parents. This is for parents who require childcare in order to enable them to take up work or to undertake education or training which could assist them to obtain work. Childcare means any form of care for a child and includes education and other supervised activity.
- 5.4. In determining the sufficiency of childcare in Tower Hamlets, the Council may have regard to childcare available outside of Tower Hamlets and is required to have regard to: the provision of childcare in respect of which the childcare element of working tax credit is payable or for which childcare costs may be included in the calculation of universal credit; and the provision of childcare suitable for disabled children.
- 5.5. The Childcare Act makes clear that although the Council's obligation is to secure the provision of sufficient childcare in Tower Hamlets, this need not be actually provided by the Council. Pursuant to section 8 of the Childcare Act, the Council may assist any person who provides or proposes to provide childcare and may make arrangements with any person to provide childcare. The assistance which the Council may provide to a childcare provider and the arrangements which the Council may make for the provision of childcare include the giving of financial assistance.
- 5.6. The Council is further required under the Childcare Act 2006 to secure that prescribed early years provision is available free of charge for specified categories of children under school age. Early years provision means the provision of childcare for a child under the age of five. The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 ("the Free Provision Regulations") provide that children entitled to free early years provision from the Council are two year olds who are eligible children and 3 year olds. A child is eligible if he or she falls within one of seven prescribed categories, which include children entitled to free school meals, looked after children and children with special educational needs.
- 5.7. In discharging its duties to provide childcare and free early years provision, the Council must have regard to guidance given by the Secretary of State, reference to which is made in the body of the report.
- 5.8. By virtue of section 111 of the Local Government Act 1972, the Council has power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. This may involve expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights. There is likely sufficient power to support the proposed

grant schemes by virtue of the Council's functions under the Childcare Act. However, if there were any doubt as to the Council's power to make a grant in pursuance of those functions, section 111 would supply that power.

- 5.9. Section 1 of the Localism Act 2011 gives the Council a general power of competence to do anything that individuals generally may do, subject to specified restrictions and limitations imposed by other statutes. As individuals may provide financial support to improve childcare, the Council may also do so, provided there is a good reason to do so and provided there is no statutory prohibition on doing so (which generally there is not). There may be a good reason for giving a grant if it is likely to further the Council's sustainable community strategy under section 4 of the Local Government Act 2000, set out in the Community Plan, or one of the Council's related strategies. Information is set out in the report as to the connection between the proposed theme specifications and the Council's relevant strategies.
- 5.10. The Council has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This is referred to as the Council's best value duty and the following matters are relevant to discharge of the duty –
- It is proposed that the schemes will be advertised in ways specified in the report, with the exception of the special project funding for which all eligible providers will be invited to participate. To this extent the grants will be exposed to a degree of competition.
  - The Council should, additionally, be able to demonstrate a direct benefit accrued from the money spent under each grant. In this regard applications are to be evaluated against the criteria specified in the report. This would leave a substantial area of discretion for the corporate director to determine whether a grant should be awarded and in what amount. This provides flexibility, which can be conducive to delivering value for money, but may have a reduced level of transparency which has the potential to impact the integrity of the decision-making process.
  - There should be a grant agreement for each grant and provision made to ensure delivery of the projects in line with the application and approval and in the event of non-delivery to protect the Council's position. Robust monitoring requirements need to be in place and appropriate performance related payment mechanisms introduced into the terms of any grant award.
- 5.11. The Council must ensure that any grants are given out on a non-profit basis. Where a grant includes a profit element it no longer remains a grant and would be considered to be procurement activity. In such circumstances this means that the Council would have failed in its duties to properly procure the subject matter of the grant in accordance with the Council's constitution and the prevailing law.

- 5.12. It is clear that there is a potential that some of the organisations (for example child minder businesses) may use the grant in order to provide growth to their business and to some extent this appears to be the purpose of the grant. This could, therefore, potentially class such grants as “State Aid” which is prohibited under European Law. However, it is unlikely that there will be cross border interest which is required for the grant to contravene the state aid rules. This is because it is unlikely that such a grant would allow a child minder business to bid in another EU member state (or gain some other advantage in the market place) or that a child minder business situated in another member state would be interested in receiving a similar grant. Also as regards state aid, a *de minimis* rule applies so provided that no individual applicant receives more than 200,000 Euros worth of grant within a 3 year period then the state aid rules will not apply to such grant
- 5.13. In carrying out its functions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). A proportionate level of equality analysis is required to discharge the duty.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 The allocation of Early Years Service grant funding across these streams is part of the LA's strategy to improve achievement by improving outcomes for young children.
- 6.2 The continued allocation of grant funding is necessary to ensure the Council meets its statutory obligations in terms of:
- Ensuring all children are able to take up their entitlement to funded early education in a high quality childcare setting.
  - Supporting access and inclusion of children with significant additional needs (Special Educational Needs)
  - Securing sufficient childcare to ensure that parents are able to work because childcare places are available, accessible and affordable and are delivered flexibly in a range of high quality providers.
  - Providing information, advice, guidance and training for childcare providers to improve the quality of their provision and to promote high quality early education.

## **7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 7.1 There are no specific actions for a greener environment as a result of these funding processes.

## **8. RISK MANAGEMENT IMPLICATIONS**

- 8.1. All individual projects funded through Early Years Service funding are closely monitored to ensure that expenditure is in line with that agreed in the Grant Agreement and that the childcare provider delivers the project deliverables as defined in the Grant Agreement.
- 8.2. The EYS Development Grant programme usually requires a financial contribution from the childcare provider of up to 50% of the total project costs.

## **9. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 9.1 Early Intervention breaks the cycle in which people who grow up with dysfunctional behaviours and lifestyles may transmit to their children, who, in turn, transmit them to their grandchildren and so on. Early Intervention offers a real chance to break this destructive pattern and helps raising children to become good parents and carers in turn

## **10. EFFICIENCY STATEMENT**

- 10.1 There are no specific efficiency contributions as a result of these funding processes.

## **11. SAFEGUARDING IMPLICATIONS**

- 11.1 Applicants have to make a declaration that they have not been disqualified from working with children.
- 11.2 The Local Authority reserves the right to undertake DBS at any time during contract period.
- 11.3 If Ofsted refuse registration on the grounds of unsuitable persons or disqualified persons the funding will be have to be repaid in full.
- 11.4 Each provision is allocated a Childcare Development Adviser to continue to help develop their provision, meet the necessary requirements and good practice.
- 11.5 All providers must have a safeguarding policy and procedure, this is checked for suitability and to ensure it complies with the Tower Hamlets Local Safeguarding Children Board (LSCB) procedures by the Early Years Childcare Development Adviser.
- 11.6 All early years providers must have a designated person for safeguarding, first aid and inclusion.

11.7 The designated safeguarding person for each provision must attend Tower Hamlets safeguarding training.

---

## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- None

### **Appendices**

- None

### **Background Documents**

- None

### **Officer contact details for documents:**

- Jo Green x4844
- Monica Forty x 3114