

<p style="text-align: center;">Grants Determination Sub - Committee</p> <p style="text-align: center;">Wednesday 3 July 2019</p>	
<p>Report of: Debbie Jones, Corporate Director Children's Services</p>	<p>Classification: Unrestricted</p>
<p>Addition to the 2015 grant conditions for the creation of early learning for two year olds (EL2) places</p>	

Executive Summary

This report proposes an addition to the grant conditions for the creation of early learning for two year olds (EL2) places in order to address the shortage of EL2 places in areas of need and to support the financial stability of participating schools' budgets.

Recommendations

The Mayor is recommended to:

1. Note the additional proposal to require schools and potential providers to develop robust business planning as part of the capital application process for the creation of early learning for two-year olds (EL2) places.

1. REASONS FOR THE DECISIONS

- 1.1 The Integrated Early Years' Service has been made aware of a possible new relationship between schools and childcare providers which has the potential to increase EL2 places in relevant wards. However, because this new relationship is untested by the local authority there is a need to ensure that robust arrangements are in place to oversee the application process.
- 1.2 The proposed revision to the application process will clarify the relationship between schools wishing to open EL2 places and any private provider of such new EL2 places. This proposal is being applied to ensure that there is a sound legal footing between schools and providers prior to agreeing capital funding. However, the exact detail of each relationship is the responsibility of the school, its governing body and the child care provider.
- 1.3 The council recommends that potential providers use standardised business templates to ensure that appropriate fiscal and organisational responsibilities of schools wishing to run child care are met.
- 1.4 If EL2 demand decreases in a particular area, the council may become liable for any future revenue shortfall affecting school budgets. Capital funding may, if provision closes, be reclaimed by the council through the existing claw back arrangements required by the Commissioners in 2015.

2. ALTERNATIVE OPTIONS

- 2.1 **Do nothing:** If no action is taken the subsequent revenue budgets of schools wishing to undertake EL2 capital builds may not be protected from the financial fluctuations of the child care market.

3. DETAILS OF THE REPORT

3.1 Background

3.1.1 The local authority's Integrated Early Years' Service (IEYS) has a duty to ensure that there are sufficient places for eligible 2 year olds (EL2). When the Government appointed Commissioners were in place they took an interest in the processes used by IEYS to distribute capital grants for EL2 place creation and in 2015 they approved these IEYS processes as robust and effective (Appendix 1: Commissioner Decision Report 15 April 2015: Early Learning for Two-year Olds Capital Process).

3.1.2 In September 2018 the Council agreed to provide £1.9 million in capital funding to develop a further 400 to 500 new early learning places for eligible two year olds (EL2) between 2019/20 (£900,000) and 2020/21 (£1,000,000). In order to access this capital funding all settings, including primary and secondary schools, have to express interest to the IEYS and then follow the agreed council processes outlined in the flowchart (Appendix 2: Flowchart for EL2 capital application process).

3.1.3 The demand for child care is driven by family income. All providers of early learning and care must consider offering "paid for" child care places to balance their annual revenue budget. The numbers of families willing to pay for child care varies significantly term by term and from ward to ward. Schools need to consider their future revenue planning very carefully if they are applying for EL2 capital funding. This is because every early learning and care provision, including schools, needs to consider the cost of employing staff. Numbers of staff required for different age groups are specified by Ofsted and checked at inspection. For a school, staff must be either qualified teachers or teaching assistants on Tower Hamlets pay and conditions. The funding stream available to schools to cover the revenue costs of EL2 places is the government entitlements. This is the same as is available to child care providers.

3.1.4 The IEYS has become aware that some schools are exploring the possibility of providing large numbers of EL2 places with a partner organisation in the areas of greatest need. Such arrangements will necessitate the employment of additional staff to meet Ofsted ratios. This is a completely new approach locally, designed to increase the take-up of EL2 places. However, it is untested and the future revenue implications for the school may be significant given that the salaries of the newly employed members of staff will be funded from the EL2 entitlement and that the demand for childcare is notoriously elastic.

3.1.5 To protect schools, and as part of the application process for all settings, IEYS requests a business plan, a risk log, financial analysis, market analysis, Ofsted registration information and clear information on pay and conditions. This is of particular significance for schools due to the requirement to offer Tower Hamlets pay and conditions. Where a school is working through a private provider, the IEYS advises the payment of the London Living Wage for childcare workers by the private provider.

3.1.6 If there is not a robust business plan in place, IEYS recommends that schools do not run childcare through their main school budgets. Where schools have attempted to do this in the past, there have been cases of bankruptcy, the costs of which fell on the council.

3.2 Proposed addition to the current arrangement

3.2.1 *The following provisions will apply where a school wishes to, and the council approves that the school may, enter into a separate legal agreement with a child care provider (a “sub-service provider”) to offer EL2 places:*

“The school must state in its application that it intends to use a sub-service provider to offer EL2 places and must supply to the Council the name and details of the proposed sub-services provider. If approved by the Council, the sub-service provider will be considered the agent/subcontractor of the School but the school as the grant recipient will remain fully responsible to the council as the delivery body for the EL2 services under the grant agreement and for any acts or omission of the sub-service provider as if they are the acts or omissions of the school. Given that the sub-service provider will play a central role in the delivery of the child care services, the council may require, and if it does, the school must procure from the sub-service provider, a collateral warranty in a form to be approved by the council as a pre-condition for the council releasing payment. This will enable the council to claim directly from the sub-service provider in the event of breach arising from sub-service provider’s acts or omission.”

4. EQUALITIES IMPLICATIONS

4.1 Eligibility for two year old places is decided at national level. Eligibility is decided on the basis of family income. This government funding benefits the most disadvantaged children and families in the borough.

5. OTHER STATUTORY IMPLICATIONS

There are no specific implications.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

6.1 This report proposes an addition to the grant conditions for the creation of early learning for two year olds.

- 6.2 Early Years childcare provision is currently funded by the Early Learning Entitlement funding (EL2) @ £6.50 per child for 570 hours p.a. This equates to £3,705 per child p.a.
- 6.3 To protect themselves financially, it is proposed that schools and potential providers develop robust business planning as part of the capital application process for the creation of early learning for two-year olds (EL2) places.
- 6.4 It is recommended that School budgets should not be used to run childcare provision. If schools run childcare through their school budgets, the volatility of the market can cause severe financial pressures
- 6.5 Childcare should either be run by an independent provider, with appropriate contractual arrangements, or set up a limited company, community interest company or charitable foundation in line with small business best practice guidance. This should be properly costed and prepared. For any of these options, the Integrated Early Year's Service must be consulted for advice.

7. COMMENTS OF LEGAL SERVICES

- 7.1 The Department for Education has set itself early learning targets relating to good language acquisition for 2028. Whilst we have no information on government policies with regards to childcare entitlements in 2028, the existence of these national targets imply continued government commitment to early years.
The proposal in this report accords with, and feeds into, that target.
- 7.2 It is essential that the grant arrangement makes provision for claw backs in the event of serious breach of the grant agreement. This is more so where the grant recipient intends to engage a third party provider to deliver the service which is the subject of the grant. Claw back is part of the grant requirements approved by the government-appointed Commissioners. It is standard practice in order to safeguard public funds. To summarise, where funding has been made available, if there is any unapproved change in use to the building the council will be entitled to decide that a claw back is needed and the school or childcare setting will be obliged to pay. However the claw back is the final step after a process of discussion and negotiation between the school or childcare organisation and the council. Claw back would only occur if the council and provider were unable to reach an agreed resolution. The proposed addition to the grant conditions referred to in paragraph 3.2 above ensures that claw back is not prevented or hindered by reason of the service being delivered by a third party on behalf of the school rather than the school itself..

Linked Reports, Appendices and Background Documents

Linked Report
NONE.

Appendices

1. Commissioners' Decision Report April 2015: "Early Learning for Two-year Olds Capital Process";
2. Flowchart for EL2 capital application process.

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

NONE.

Officer contact details for documents:

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