


Commissioner Decision Report 19 th August 2015	 TOWER HAMLETS
Report of: Debbie Jones Interim Corporate Director Children's Services	Classification: Unrestricted
Extension to Early Years Sector Support (ex MSG) funding	

Originating Officer(s)	Monica Forty
Wards affected	All wards
Key Decision	Yes
Community Plan Theme	A Prosperous Community

Reasons for Urgency

The report was published on 17th August 2015, which is less than five clear days between publication and consideration by the Commissioners on 19th August 2015 as is usual practice. The areas contained in this report are however significant areas in terms of service delivery and spend and would benefit from obtaining a decision as soon as possible. The Commissioners' meeting on 29th of July had requested more information before being able to agree to the extension to the Mainstream Grant roll-over due to delay in the decision on services Schools Forum wishes to commission in the future; the commissioning process will be a budgetary/ service commissioning decision not a grant funding decision.

If no decision is taken or the extension to the funding is not granted, then small organisations whose services may be needed at a later date may need to make staff redundant. In one specific case, 91 childcare staff would not be paid in September as a result of the loss of payroll support services. It is also arguable that the five clear day requirement in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 does not apply to decisions by the Commissioners.

Executive Summary

The Early Years Sector Support (ex-MSG) is a block of funding from the Dedicated Schools Grant (DSG) that was previously used to contribute to the Local Authority's Mainstream Grant programme. From 2015/16 this budget allocation reverts back to Dedicated Schools Grant (DSG) as agreed by Schools Forum. Any future spend from this block of funding will be agreed by Schools Forum. The Commissioners delegated the operation of the arrangements for the 2015/16 DSG to the Schools Forum on 27th March 2015. It is intended that a proportion of this budget will be used to increase the Early Learning for Two Year Olds payment rate for childcare provision for disadvantaged two year olds and the rest will be commissioned for infrastructure support for childcare provision and essential early years sector activities that cannot be provided from elsewhere; all organisations currently funded will be free to tender for services through this process.

Approval is being sought for the extension to the current grant spending for 23 childcare providers and 4 infrastructure organisations, as detailed in Appendix 1 and 2, from the Early Years Sector Support funding block due to delay in the decision on services Schools Forum wishes to commission in the future; the future commissioning process will be a budgetary/ service commissioning decision not a grant funding decision.

The requested extension is to the 31 December 2015, with a provision to extend for a further three months until 31 March 2016 in the event that the proposed commissioning exercise has not concluded within the first timeframe.

Recommendations:

The Commissioners are recommended to:

1. Agree to the extension of the original MSG contracts (albeit now funded by the Early Years Sector Support funding) in respect of 23 childcare providers and 4 infrastructure organisations to the 31 December 2015 with a provision to extend for a further three months until 31 March 2016 while the commissioning process for future services is completed.
2. Delegate to the Head of Legal Services the authority to enter into all necessary extension agreements on behalf of the Council under similar terms as are pre-existing and agreed between the parties

1. REASONS FOR THE DECISIONS

- 1.1 The Local Authority is allocated funding from central government to fund the provision of childcare for children eligible for a free place through the Early Learning for Two Year Olds programme and to ensure the sufficiency of quality childcare through supporting the business sustainability of childcare providers.

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.
- 2.2 If no decision is taken or the extension to the funding is not granted, then small organisations whose services may be needed at a later date may need to make staff redundant. In one specific case, 91 childcare staff would not be paid in September as a result of the loss of payroll support services. In another case at least 50 families would cease receiving services at least 20 of which have children with profound special needs.

3. DETAILS OF REPORT

3.1 Purpose of Proposed Funding

The Early Years Sector Support (ex-MSG) funding is used to support voluntary sector childcare providers in making available childcare places for children eligible for free childcare through the Early Learning for Two Year Olds programme and the Free Entitlement for three and four year olds. In addition, the funding is also used to fund infrastructure support services for voluntary sector childcare providers including payroll management, support and capacity building for management committees and support for children with additional needs. This approval would be for a general extension to current services.

3.2 Approval Process for Grants

The funded projects were approved as part of the 2012-15 Mainstream Grant programme, this proposal represents a continuation of the previously approved projects. As of 27/03/15 Commissioners agreed to delegate the operation of the existing arrangements for the DSG to the Corporate Director (Education, Social Care and Wellbeing), whereby the Schools Forum determines the allocation of the ISB and Service Heads approve the allocation of the 'contingency'.

3.3 Grant Criteria

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

The Mainstream Grant funding was 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.
- The organisation is a voluntary sector organisation.

3.5 Award Amount and Payment

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 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; the projects 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 scheme outlined in the report is concerned with: ensuring the sufficiency of childcare and supporting the business sustainability of voluntary sector childcare providers within the borough. 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 is part of the Local Authority'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 this funding stream are closely monitored to ensure that expenditure is in line with that agreed in the Grant Agreement and that the project delivers the project deliverables as defined in the Grant Agreement.

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 this funding process.

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.
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Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- None

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

- None

Officer contact details for documents:

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