

Luton Council Provider Agreement

Terms and conditions for providers offering early years free entitlements

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Last updated: September 2022

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Overview of the agreement

This agreement sets out the requirements Luton providers are expected to meet when receiving funding for the supply of free of charge early years provision.

The funding applies to the 15 hour entitlement for the most disadvantaged two year olds, the 15 hour entitlement for parents of three and four year olds (the universal entitlement) and the 30 hours entitlement for working parents of three and four year olds (the extended entitlement).

The agreement is between Luton Council and early years providers and includes:

- early years providers and childminders registered on the Ofsted Early Years Register
- childminders registered with a childminder agency that is registered with Ofsted
- independent schools and academies taking children age two and over and which are exempt from registration with Ofsted as an early years provider

Legal framework and statutory guidance

The following frameworks and legislations underpin this agreement:

- Early Education and Childcare, Statutory Guidance for Local Authorities 2017
- Childcare Act 2006
- Childcare Act 2016
- Equality Act 2010
- School admissions code 2014
- Statutory framework for the early years foundation stage (EYFS) 2021
- Local Authority, (Duty to Secure Early Years Provision Free of Charge) Regulations 2014

- The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016
- Special educational needs and disability code of practice: 0 to 25 years 2015
- Data Protection Act 2018

Luton Council reserves the right to amend this agreement to reflect changes in legislation and departmental guidance. References to legislation will include any amendments made to that legislation, without express change in the provider agreement.

Luton Council key responsibilities

- to secure a free entitlement place for every eligible child within Luton
- to work in partnership with providers to agree how to deliver free entitlement places
- to be clear about its role and the support on offer locally to meet the needs of children with special educational needs and/or disabilities (SEND) as well as expectations of providers
- to contribute to the safeguarding and promote the welfare of children and young people in Luton

Provider key responsibilities

- providers must comply with all relevant legislation and insurance requirements
- providers should deliver the free entitlements consistently to all parents, whether in receipt of 15 or 30 hours and regardless of whether parents opt to pay for additional services or consumables - providers should be clear and communicate to parents details about the days and times that the provider offers the free places, along with all services and charges

- children accessing the free entitlements should receive the same quality and access to provision
- providers must follow the EYFS¹ and have clear safeguarding policies and procedures in place that link to Luton Council's guidance for recognising, responding, reporting and recording suspected or actual abuse and neglect
- providers must have arrangements in place to support children with special educational needs and/or disabilities (SEND) - these arrangements should include a clear approach to identifying and responding to SEND
- providers should utilise the SEN inclusion fund and Disability Access Fund (DAF) to deliver effective support, whilst making information available about their SEND offer to parents

Safeguarding

- a) Luton Council has overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area, with a number of statutory functions under the 1989 and 2004 Children Acts which make this clear, and the 'Working Together to Safeguard Children' 2018² guidance sets these out in detail.
- b) All providers must follow the EYFS statutory framework and have clear safeguarding policies and procedures in place that are in line with Luton Council guidance and procedures for responding to and reporting suspected or actual abuse and neglect. A lead practitioner must take responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect. All providers must have regard to the 'Working Together to Safeguard Children' 2018 guidance.

¹ <https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942454/Working_together_to_safeguard_children_inter_agency_guidance.pdf

Eligibility for free entitlements

- a) Providers should check original copies of documentation to confirm a child has reached the eligible age on initial registration for all free entitlements and enter this on the EYES Establishment Portal.³ Providers can retain paper or digital copies of documentation to enable Luton Council 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.
- b) Providers offering places to eligible two year olds should do so on the understanding that the child remains eligible until they become eligible for the universal entitlement for three and four year olds.
- c) Luton Council will ensure that a child has a free entitlement place no later than the beginning of the term following both the child and the parent meeting the eligibility criteria for the free entitlements.
- d) Compulsory school age is defined in the Education Act 1996 - that is a child reaches compulsory school age at the beginning of the school term following the child's 5th birthday. This means some five year olds will be accessing the free entitlement as they will not have reached compulsory school age.
- e) Providers can check the validity of 30 hours eligibility codes through the Provider/Establishment Portal. For those providers without access Luton Council will confirm the validity of 30 hours eligibility codes, via the Eligibility Checking Service (ECS), allowing providers to offer 30 hours places for eligible three and four year olds.
- f) Luton Council provides information within the Provider/Establishment Portal, which allows providers to review the validity of eligibility codes for children who qualify for 30 hours free childcare. Providers should regularly check to support parents to keep their code eligible and notify them if they fall in to their grace period.

³ EYES portal scheduled for November 2022

The grace period

- a) A child will enter the grace period when the child's parents cease to meet the eligibility criteria set out in the Childcare (Early Years Provision Free of Charge Extended Entitlement) Regulations 2016, as determined by HMRC or a First Tier Tribunal in the case of an appeal.
- b) Luton Council should continue to fund a place for a child who enters the grace period as set out in the Early Education and Childcare Statutory guidance for Local Authorities 2018.
- c) If a parent falls into their grace period before their child has started a 30 hours place, they should not take up their 30 hours place.

Two Year Funding

- a) Two-year-old funded children can start their place at any time during the term after their second birthday.
- b) Providers must check original copies of documentation to confirm eligibility for funding and should retain paper or digital copies of the eligibility documentation for auditing purposes. 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.
- c) To support the settling in of two-year-olds a three week period must be allowed in which the parent can decide to change provider regardless of headcount dates and without having to give the required notice period - if a child moves providers within this period, funding will be paid pro-rata between providers.
- d) After the initial three week settling in period, notice periods and termly funding payments will apply in the same way as universal and extended hour funding. Providers must ensure that clear and accessible information regarding notice periods is provided to all parents.
- e) In exceptional cases where the parent moves, or circumstances change, which may result in the child not attending an early years provision then termly funding will be shared between providers at the discretion of Luton Council.

Flexibility

- a) Provision must be offered within the national parameters on flexibility as set out in Section A2 of Early Education and Childcare Statutory guidance for Local Authorities.
- b) Providers should work with the Family Information Service and share information about the times and periods at which they are able to offer free entitlements to support Luton Council in securing sufficient, stretched and flexible places to meet parental demand. Providers should also make information about their offer and their admissions criteria available to parents at the point the child first accesses their provision.
- c) Parents can split their free entitlement between multiple providers, though no more than two sites in one day. However, continuity of care is important for the child. Therefore, consideration should be given to the impact that multiple providers may have on a child's learning, development and wellbeing.
- d) Where parents split their child's free entitlement between providers, those providers need to distinguish between the 15 hours universal free entitlement and the additional 15 hours extended free entitlement based on parental choice. Accurate information must be submitted to Luton Council to ensure a fair split of funding at termly headcounts and at the annual census.
- e) Luton Council recommends that providers use Luton's parental declaration form and ensure parents identify the provider where they are taking the universal 15 hours free entitlement and, if appropriate, where they are taking the additional 15 hours extended entitlement.
- f) Luton Council and all providers must take account of the DfE statutory guidance. If a parent ceases to meet the eligibility criteria for 30 hours the parent should choose which provider will continue to be funded for their child's universal 15 hours entitlement.

Partnership working

- a) Partnerships will be supported by Luton Council on different levels, including:
- Luton Council and providers
 - Providers working with other providers, childminders, schools and other organisations
 - Providers and parents
 - Luton Council and parents
- b) Luton Council will promote partnership working between different types of providers, including childminders, across all sectors and encourage more providers to offer flexible provision, alongside other providers.
- c) Providers should work in partnership with parents, carers and other providers to improve provision and outcomes for children in their setting. An interactive toolkit⁴ has been developed to help providers set up or join a partnership, maximise the benefits of working together and tackle the challenges joint working can bring.
- d) Providers should discuss and work closely with parents to agree how a child's overall care will work in practice when their free entitlement is split across different providers, such as at a school and a childminder, to ensure a smooth transition for the child.

Special educational needs and disabilities

- a) Luton Council will strategically plan support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in the town as per the Special Educational Needs and Disability code of practice: 0 to 25 years (January 2015).⁵
- b) Providers must ensure their owners and all staff members are aware of their duties in relation to the SEND Code of Practice and the Equality Act 2010.⁶

⁴ <https://www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-toolkit>

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf

⁶ <https://www.gov.uk/guidance/equality-act-2010-guidance>

- c) Luton Council will be clear and transparent about the support available through the Local Offer⁷ so parents and providers can access that support.
- d) Providers should be clear and transparent about the SEND support on offer at their setting to support parents to choose the right setting for their child with SEND.

Social mobility and disadvantage

- a) Luton Council will promote equality and inclusion, particularly for disadvantaged families, looked after children and children in need by removing barriers of access to free places and working with parents and carers to give each child support to fulfil their potential.
- b) Providers should ensure they have identified the disadvantaged children in their setting as part of the process for checking Early Years Pupil Premium (EYPP) eligibility. Providers will also use EYPP and any locally available funding streams or support to improve outcomes for this group.
- c) Luton Council will work with providers to promote and improve outcomes for disadvantaged children.

Quality

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

⁷ <http://directory.luton.gov.uk/send>

- c) Luton Council has a legal duty to provide information, advice and training on meeting the requirements of the EYFS statutory framework, meeting the needs of children with SEND and on effective safeguarding and child protection for providers who are judged less than 'Good' by Ofsted or newly registered providers.
- d) Provision must be offered in accordance with the national parameters on quality as set out in Section A3 of Early Education and Childcare Statutory Guidance for Local Authorities and the EYFS statutory framework.

Business planning

- a) This agreement with Luton Council sets out the conditions to be met by providers to support payment and delivery of free entitlements which all providers should follow when submitting their information and documentation, including the importance of timely and accurate census returns.
- b) Providers should ensure they collect and submit timely and accurate information and documentation, including, but not limited to, headcount data, census data, parental declarations and invoices, as per the financial guidelines of Luton Council. Failure to do so may result in inaccurate, delayed or suspended funding.
- c) Providers should maintain accurate financial and non-financial records relating to free entitlement places and should give Luton Council access, on reasonable notice, to all financial and non-financial records relating to free entitlement places funded under this agreement, subject to confidentiality restrictions.

Charging

- a) Government funding is intended to cover the cost to deliver the universal or extended entitlement to free, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services.
- b) Providers can charge for meals and snacks as part of a free entitlement place and can also charge for consumables such as nappies or sun cream and for services such as trips and musical tuition. These charges must be voluntary for the parent.

- c) Where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the free entitlements are responsible for setting their own policy on how to respond, with options including waiving or reducing the cost of meals and snacks or allowing parents to supply their own meals. Providers should be particularly mindful of the impact of additional charges on the most disadvantaged parents.
- d) Providers should deliver the free entitlements 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 optional hours, services, meals or consumables.
- e) Luton Council will not intervene where parents choose to purchase additional hours of provision or additional services, providing that this does not affect the parent's ability to take up their child's free place. Providers should be completely transparent about any additional charges.
- f) Providers should publish their admissions criteria and ensure parents understand which hours/sessions can be taken as free provision. Not all providers will be able to offer fully flexible places, but providers should work with parents to ensure that as far as possible the patterns of hours are convenient for parents' working hours.
- g) Providers can charge parents a deposit to secure their child's free place but should refund the deposit in full to parents within a reasonable time scale. Parents of funded two year olds should not be charged a deposit.
- h) Providers cannot charge parents "top-up" fees (the difference between a provider's usual fee and the funding they receive from Luton Council to deliver free places), or require parents to pay a registration fee as a condition of taking up their child's free place.
- i) Providers should ensure their invoices and receipts are clear, transparent and itemised, allowing parents to see that they have received their free entitlement completely free of charge and understand fees paid for additional hours. Providers will also ensure that receipts contain their full details so that they can be identified as coming from a specific provider.

- j) Providers should ensure that parents understand that if they choose to send their child to a pre-school whilst waiting to be admitted to a school they will not be eligible for funding. In these circumstances the provider may charge the parent / carer for the hours accessed whilst the child is awaiting a phased intake into the school.

Provider eligibility for funding

- a) Luton Council recognises the Government's intention that, as far as possible, free places should be delivered by providers who have achieved an overall judgement of 'outstanding' or 'good' in their most recent Ofsted inspection report.
- b) Luton Council will fund places for two, three and four year old children at any provider judged 'good' or 'outstanding' by Ofsted, or at any childminder registered with a childminder agency judged 'effective' by Ofsted if a parent wants their child to take up their free place at that provider. The provider must also agree to the terms of the Luton Council Provider Agreement.
- c) Luton Council will fund places for three and four year old children at any provider judged 'requires improvement' by Ofsted or at any childminder registered with a childminder agency judged 'effective' by Ofsted if a parent wants their child to take up their free place at that provider. The provider must also agree to the terms of the Luton Council Provider Agreement and engage with the council demonstrating an improvement in quality against the Ofsted actions. Where a provision has received two consecutive 'requires improvement' Ofsted judgements, Luton Council will not fund any new three and four year olds.
- d) Luton Council will fund places for two, three and four year old children at new providers registered with Ofsted until the provider's first full Ofsted inspection judgement is published or at a childminder registered with an agency until the agency's first full Ofsted inspection judgement is published, if a parent wants their child to take up their free place at that provider. The provider must also agree to the terms of the Luton Council Provider Agreement.
- e) Luton Council are not required to fund places at providers who do not meet the quality standards set out in b) and c) above but may choose to do so, on an individual basis, to ensure sufficiency of free places.

- f) Luton Council will not fund providers who do not actively promote fundamental British values or if they promote as evidence-based, views or theories which are contrary to established scientific or historical evidence and explanations.
- g) Luton Council will only fund places for two year old children in 'requires improvement' providers where there is not sufficient, accessible 'good' or 'outstanding' provision.
- h) Luton Council will fund providers with an Ofsted inspection judgement of 'met' until their Ofsted quality inspection judgement is published. Luton Council will not fund providers with an Ofsted inspection judgement of 'not met'

Funding process

- a) Frequently asked questions regarding funding can be found in Appendix 1.
- b) Providers should accurately complete and submit headcount tasks and other necessary data returns by the agreed date to support Luton Council to make payment.
- c) Providers must ensure that parents have completed and signed a parental declaration form. This may be completed termly or annually, however a new form must always be completed if there is a change in the number of funded hours or in any personal information. Parental declarations must be submitted on request to Luton Council as part of the headcount process.
- d) Providers need to complete all funding tasks and data requests within the timeframes set by the early years and finance departments.
- e) Providers will need to ensure they submit the data accurately onto the Provider/Establishment Portal. Any inaccuracies or late submissions will lead to payment being delayed.
- f) Providers must provide the end date or amend any rolled over children on the Provider/Establishment Portal to ensure that they claim the correct funding for that child.

- g) For a stretched offer: If the child attends for 15 or more hours per week providers should claim the maximum entitlement for the term (the same as the non-stretched children). Providers will then need to demonstrate how the funding was accessed when audited.
- h) If a child leaves a setting the provider must inform Luton Council by entering the leaving date on the portal.
- i) All queries on duplicate claims must be resolved before payments can be released. The provider must be clear with the parent about the maximum number of hours they can claim and how they wish to apportion their funding if using more than one provider. Every individual headcount claim is checked to ensure that claims do not exceed entitlement.
- j) If a child is booked to attend but is absent for a period of two weeks or less Luton Council will not penalise the provider by reclaiming the funding. If a child's absence is recurring or for extended periods of time providers should contact nursery.headcount@luton.gov.uk who will look at each individual case and will use their discretion regarding whether or not to reclaim the funding.
- k) If a provider needs to close or cannot offer a place for unexpected or unplanned reasons, then the parent/carer should be offered an alternative day to ensure the child is able to access their full entitlement.
- l) If, for some reason, during a term a provider ceases to be able to offer funded two, three and four year old places, they will be required to return to Luton Council the portion of the funding applicable to any remaining sessions not delivered in that term.
- m) Providers must inform parents by letter if they are withdrawing from offering two, three and four year old funding, giving at least a term's notice so that parents can make alternative arrangements, and provide the parents with contact details of the Family Information Service fis@luton.gov.uk or 01582 548888. The provider must inform Luton Council in writing as soon as the decision is made to withdraw.

Compliance

- a) Luton Council can carry out checks and/or audits on providers to ensure compliance with the requirements of delivering the free entitlements.
- b) Providers should be audited by Luton Council at least once every three years, with two weeks' notice given.
- c) Providers must maintain and retain all attendance, signed parental declarations and finance records for a period of six years. Providers must hold data in accordance with the Data Protection Act 2018.
- d) Luton Council may request copies of charges to children for all round childcare, to ensure no charge is being made for the free early years education entitlement.

Complaints process

All providers should ensure they have a complaints procedure in place that is published and accessible for parents who are not satisfied their child has received their free entitlement in the correct way, as set out in this agreement and in the DfE's Early Education and Childcare Statutory guidance for Local Authorities.

Luton Council expects that the majority of complaints will be resolved locally using the provider's own complaints procedure. If a parent is not satisfied that their child has received the funding in accordance with the legislation or as set out in this agreement, and has not been able to resolve their concern directly with their provider, they should contact Luton Council at fis@luton.gov.uk.

If a parent or provider has a concern or a complaint about how Luton Council are administering the funding they should follow Luton Council's complaints procedure set out below;

Stage 1

Luton Council will try to resolve provider and parent issues quickly and informally whenever possible. All complaints will be acknowledged within three working days and a full response received within 15 working days.

Stage 2

If the provider or parent is unhappy after they have received the full response at Stage 1, they should contact Luton Council within 28 working days. This complaint will be acknowledged within three working days and a full response given within 25 working days.

If a provider or parent is not satisfied with the way in which their complaint has been dealt with by Luton Council or believes Luton Council has acted unreasonably, they can make a complaint to the Local Authority Ombudsman. Such complaints will only be considered when Luton Council's complaints procedures have been exhausted.

Website: www.lgo.org.uk
Address: Local Government Ombudsman
PO Box 4771
Coventry
CV4 0EH
Telephone: 0845 602 1983

Termination of the agreement and the withdrawal of funding

Luton Council does not undertake a separate quality assessment and therefore the Ofsted inspection outcome will be the main (though not sole) deciding factor in determining the removal of funding.

Ofsted suspension

- funding will be withdrawn from providers whose registration has been suspended by Ofsted
- providers will be able to reapply for the funding once the suspension has been lifted and an appropriate Ofsted outcome is evident

Ofsted inadequate judgement

- Luton Council will not fund any new eligible two, three and four year olds in a provision judged inadequate by Ofsted from the date of the published report
- Luton Council will write to parents within five working days of the published report to advise them that the provider is no longer meeting the required quality standards for early years funding - the parent will be offered support and advice to find alternative suitable provision through the Family Information Service

- Luton Council will start the process to withdraw the funding of existing two, three and four year old children - the procedure for the withdrawal of funding in these circumstances and the appeals process can be found in Appendix 2.

Ofsted requires improvement judgement

- Luton Council will not fund any new eligible two year olds in a provision judged to requires improvement by Ofsted
- Luton Council will continue to fund existing two, three and four year olds as long as the provider is engaging with the council and can demonstrate improvement in quality against the Ofsted actions
- Luton Council will write to parents within five working days of the published report to advise them that the provider is no longer meeting the required quality standards - the parent will be offered support and advice to secure alternative suitable provision through the Family Information Service
- where a provision does not engage with Luton Council and cannot show evidence of progress, or has received two consecutive 'requires improvement' Ofsted judgements, the council will not fund any new three and four year olds

Failure to promote British values

- Luton Council will suspend or withdraw funding if there are reasonable grounds to believe that a provider is not actively promoting fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or is promoting as evidence-based views or theories which are contrary to established scientific or historical evidence and explanations.

Breach of the Luton Council Provider Agreement

- a childcare provider found to be in breach of any of the requirements detailed in the Luton Council Provider Agreement may have their funding suspended or removed
- in all cases where funding is to cease, Luton Council will take into account the continuity of care for the children involved when agreeing timescales and provide support to families to secure alternative provision through the Family Information Service

Appeals

Providers can appeal against a decision to deny approval to offer the funding or have their funding withdrawn. Providers who wish to appeal should write to Luton Council, within 10 days of receiving notification of the council's decision to withdraw funding. They should outline the grounds for appeal and give reason why they believe that they are meeting the full terms of compliance. This will then be reviewed by senior managers in line with the full appeals procedure.

The procedure for withdrawal of funded early education from inadequate settings and the right to appeal can be found in Appendix 2.

Data protection

Data from which it is possible to identify children (in any medium, including within a Management Information System) is personal data. Such personal data must be managed in accordance with the requirements of the Data Protection Act 2018 (the Act). Data Controllers must ensure that their data handling rules comply with the Act and that staff understand these.

Providers must hold data in accordance with the Act including the requirement to issue parents with a fair processing notice explaining how their data and data about their child is to be used.

The Act gives rights to those (known as data subjects) about whom data is held, such as pupils, their parents and teachers. This includes:

- the right to know the types of data being held
- why it is being held
- to whom it may be communicated

Privacy Notices should be used to meet data subjects' rights and to explain to families and staff how their data is being used in the census collections including the school workforce, early years census and school census.

The Department of Education strongly recommends that the privacy notice be included as part of an induction pack for staff and made available to parents via the provider's website, as well as potentially featured on the staff notice board / intranet. They do not need to be issued on an annual basis as long as new children and staff are aware of the notices and they are readily available electronically or in paper format.

Legal Duties under the Data Protection Act 2018

All providers and Luton Council have a legal duty under the Act to ensure that personal data is processed securely. Processing is the collection, handling (use), storage, transmission and deletion of data.

If you experience a personal data breach, you need to inform Luton Council and consider whether this poses a risk to people. You need to consider the likelihood and severity of any risk to people's rights and freedoms, following the breach. When you have made this assessment, if it is likely there will be a risk then you must also notify the Information Commissioners Office (ICO); if it is unlikely then you do not have to report it.

Further information is available from the Information Commissioners Office.

Luton Council's Data Protection Policy is available at www.luton.gov.uk

Luton Council Provider Agreement

Terms and conditions for providers offering early years free entitlements

Effective from September 2022

All providers in receipt of the early years free entitlements from Luton Council are accountable for understanding and operating within the terms and conditions of the Luton Council Provider Agreement.

Funding cannot be claimed until a signed and dated copy of this agreement is received by Luton Council or the online confirmation of understanding has been submitted.

Declaration

I (print name of owner or committee chairperson).....

of (print name of early years provider).....

confirm that I understand and agree to the conditions set out in this agreement, enabling my organisation to receive funding for the provision of free of charge early years places to eligible children.

I also confirm that any data will be held in accordance with the Data Protection Act 2018 and all parents will be issued with a fair processing notice explaining how their data and data about their child is to be used.

(Signature of owner or committee chairperson).....

(Date of signature).....

Please complete the online confirmation or sign and return this page to:

nursery.headcount@luton.gov.uk

or

**Beverley Ralevic
Early Years Childcare and Provision Manager
The Leagrave Centre
Strangers Way
Luton
LU4 9ND**