

Herefordshire Nursery Education Funding Agreement 2017

Contents

	Page number
Overview	3
1. Definitions	4
2. Term	6
3. Herefordshire's Responsibilities & Agreement Requirements	6
4. Provider Responsibilities	6
5. Safeguarding	7
6. Eligibility	7
7. 2 year funding	8
Eligibility	8
Applications	8
Verification and accessing provision	8
8. 3 & 4 year old NEF	9
9. EYPP	9
10. 30 Hour – Extended Childcare Entitlement for 3 & 4 year olds	10
Grace Period	12
11. Flexibility for NEF	12
12. Partnership Working	14
13. Special Educational Needs & Disabilities	15
Social Mobility & Disadvantage	15
14. Quality	16
15. Financial Accountability / Business Planning	18
16. Charging	20
17. Compliance	22
18. Dispute Resolution and Termination	23
19. Freedom of Information & Data Protection	24
20. General	24
21. Complaints and Appeals	25
22. Useful Contacts	26
23. Provider Declaration: Complete, Sign and Return	27

This Early Education and Childcare Provider Agreement 2017-2018 is between:
(1) Herefordshire Council “the Council”
(2) Early Years Childcare Providers that provide childcare in the county of Herefordshire and are Ofsted registered /approved in England (“Providers”, “Provider”).

Overview

1. It is important that early education and childcare providers (“Providers”) who are eligible to receive nursery education funding understand their responsibilities under this Provider Agreement (referred to throughout as “the Agreement”). It is based on the current law and statutory guidance issued by the Department for Education (DfE).
2. This Agreement covers funded places for two, three and four year olds (known as Nursery Education Funding) and Early Years Pupil Premium for three and four year olds who are accessing a funded place. However it is important to note the following elements of funding:
 - 2.1 Universal based entitlement: All three and four year olds are entitled to a maximum of 15 funded hours per week over 38 weeks or 570 hours per year as a ‘stretched’ offer.
 - 2.2 Criteria based funding (family or household eligibility):
 - 2.2.1 Funding for disadvantaged two year olds - a maximum of 15 funded hours per week over 38 weeks or 570 hours per year as a ‘stretched’ offer.
 - 2.2.2 Early Years Pupil Premium for three and four year olds who are accessing the universal 15 hours.
 - 2.2.3 Extended funding for three and four year olds: In addition to the 15 hour universal entitlement, eligible families could receive a maximum of 15 extra hours per week over 38 weeks totalling 30 hours per week, or 1140 hours per year as a ‘stretched’ offer.
3. This Agreement is applicable to the following provider types:
 - 3.1 Day nurseries including governor run
 - 3.2 Pre-schools,
 - 3.3 Wraparound / Integrated Care,
 - 3.4 Childminders and childminder agencies,
 - 3.5 Out of School Care/ Holiday Clubs (on the EY register).
 - 3.6 Owners of the aforementioned.

It therefore covers a variety of ownerships such as the local authority, private and limited companies, voluntary, governor, academy and independent sectors.

4. The quality of a child's development up to the age of five has a huge bearing on all aspects of the rest of their life. Therefore we owe it to every child to do all we can to ensure they have the best start possible in life.
5. The EYFS sets the standards that all early years' providers must meet to ensure that children learn and develop well and are kept healthy and safe. It promotes teaching and learning to ensure children's school readiness' and gives children the broad range of knowledge and skills that provide the right foundation for good future progress through school and life.²

1: Definitions

1.1 In this Agreement the following words shall have the following meanings:

- “Default”** means any breach of the obligations (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the Provider or Staff in connection with or in relation to the subject matter of this Agreement;
- “DPA”** means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable, the guidance and codes of practice issued by the Information Commissioner;
- “EYIAs”** means Early Years Improvement Advisors;
- “FOIA”** means the Freedom of Information Act 2000;
- “EYFS”** means Early Years Foundation Stage:
<https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>
- “Parent”** means parents, lone parent, guardians, carers and “Parents” shall be construed accordingly;
- “Relevant Legislation”**
includes the following legislation:
- 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 2014;
 - Local Authority (Duty to Secure Early Years Provision Free of Charge) - Regulations 2014;
 - The Childcare (Early Years Provisions Free of Charge) (Extended - Entitlement) Regulations 2016; and

Special educational needs and disability code of practice: 0-25 years 2015;

“HSCB” means Herefordshire Safeguarding Children’s Board:

“SEND” means Special Educational Needs and Disability;

“SEND Code of Practice”

means the Special Education Needs and Disability code of practice: 0 to 25 years:
<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

“DAF” means Disability Access Fund. Additional support for children with disabilities;

“DERN” means Department for Education Reference Number

‘Staff’ means all staff, servants, employees, agents, sub-contractors and other persons working for the Provider including volunteers either paid or unpaid;

“Top Up Fees”

means the difference between the Provider’s usual fee and the funding it receives from the Council to deliver free places;

“Universal Entitlement”

means all three and four year olds are entitled to a maximum of 15 funded hours per week over 38 weeks or 570 hours per year as a ‘stretched’ offer;

“Working Together to Safeguard Children 2015 Guidance”

means the guidance for safeguarding and welfare currently is available at <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

1.2 In this Agreement (except where the context otherwise requires):

1.2.1 A reference to a party is to a party to this Agreement and shall include that party’s personal representatives, successors or permitted assignees;

1.2.2 Any reference to the words “include”, “includes” or “including” or any words to a similar effect shall be construed as if they were immediately followed by the words “without limitation”;

1.2.3 Any reference to any statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted.

2: Term

- 2.1 The Agreement shall commence on the 1st September 2017 and shall expire on the 31st August 2018, unless it is extended by mutual agreement in writing by the Council.
- 2.2 The Provider must comply with all of the terms set out in this Agreement in order to continue receiving funding.
- 2.3 Failure to comply with the terms of this Agreement may result in funding being withheld or the termination of funding.
- 2.4 As an existing Provider currently offering Nursery Education Funding, the Provider must complete, sign and return the Agreement. Should the Provider fail to return the Agreement signed on behalf of the Provider this may lead to funding being withheld or permanently withdrawn.
- 2.5 If the Provider is newly registered with Ofsted or newly set up and exempt from registration, the Provider must complete, sign and return the Agreement with the other required documentation as stated in the NEF Application Pack in order to receive funding.

3: Herefordshire Council responsibilities and Agreement requirements.

- 3.1 The Council must secure a Nursery Education Funded place for eligible children in its area.
- 3.2 The Council will work in partnership with Providers and professionals to agree how to deliver early education funded entitlements.
- 3.3 The Council will be clear about their role and the support on offer to meet the needs of children with special educational needs and/ or disabilities (SEND) as well their expectations on Providers.
- 3.4 The Council shall contribute to the safeguarding and promote the welfare of children and young people in its area.

4: Provider Responsibilities

- 4.1 The Provider must comply with all relevant legislation and insurance requirements as outlined in the EYFS.
- 4.2 The Provider shall deliver the funded entitlements consistently to all Parents, whether in receipt of 15 or 30 hours and whether they opt to pay for optional services or consumables. This must be made very clear to parents when parents sign up to attend a nursery place.
- 4.3 The Provider shall be clear and communicate to all Parents details about the days and times that funded places are offered along with services and charges.
- 4.4 Those children accessing the funded entitlements shall receive the same quality and access to provision

5: Safeguarding

- 5.1 The Provider must contribute to safeguarding and promoting the welfare of children and young people attending their provision.
- 5.2 The Provider must follow the EYFS requirements and shall have clear safeguarding policies and procedures in place that are in line with local guidance for responding to, recording and reporting suspected or actual abuse and neglect.
- 5.3 A lead practitioner of the Provider must take responsibility for safeguarding and staff at the provision must have the required training as outlined by HSCB and EYFS to identify signs of abuse and neglect.
- 5.4 Providers must have regard to the 'Working Together to Safeguard Children 2015' statutory Guidance and HSCB's policies and procedures as outlined on their website.

6: Eligibility

- 6.1 It is the responsibility of the Provider to check original copies of documentation to confirm a child has reached the eligible age for a funded placement. The Provider should retain paper or digital copies of documentation to enable the Council to carry out audits and any fraud investigations.
- 6.2 Where the Provider retains a copy of documentation, this must be stored securely and destroyed when the record is no longer required. Providers must refer to the current data privacy notice.
- 6.3 The dates for when a child can start a universal placement are as follows:
 - Children who turn three years old in the period between 1st January and 31st March can start a funded placement at the beginning of term from 1st April or at any point after.
 - Children who turn three years old in the period between 1st April and 31st August can start a funded placement at the beginning of term from 1st September or at any point after.
 - Children who turn three years old in the period between 1st September and 31st December can start a funded placement at the beginning of term from 1st January or at any point after.

7: 2 Year NEF

7.1 Eligible 2 year olds can commence a funded place as follows:

- Children who turn two years old in the period between 1st January and 31st March can start a funded placement at the beginning of term from 1st April or at any point after.
- Children who turn two years old in the period between 1st April and 31st August can start a funded placement at the beginning of term from 1st September or at any point after.
- Children who turn two years old in the period between 1st September and 31st December can start a funded placement at the beginning of term from 1st January or at any point after.

2 year funding for eligible children funding shall remain until the child becomes eligible for a three year funded place from the start of the first term after their third birthday.

7.2: Eligibility for 2 year funding

Families will need to meet the eligibility criteria which can be found on the Council website (2 year funding). Eligible families can receive up to 15 hours per week over no fewer than 38 weeks (or 570 hours stretched over more than 38 weeks of the year).

7.3: Applications

Applications can be submitted by Parents as follows:

- 7.3.1 Online through the 2 year online checker on the council website. Click on 'Apply Online' for benefit related criteria this will provide an instant answer
- 7.3.2 On a paper application form available on request. Paper based applications can only be verified by the Local Authority and eligibility will be confirmed via a letter or email
- 7.3.3 Providers may support eligible families to apply for 2 year places with consent.
- 7.3.4 Parents who meet the criteria through Disability Living Allowance must provide evidence the child is in receipt of this as this cannot be confirmed via the online application process. Evidence must be kept within the setting and be available for audit.

7.4: Verification and accessing provision

- 7.4.1 All places must be verified and agreed by the Council before funding can commence. No exceptions will be made for Providers who have accepted children for 2 year funding places without a confirmation letter or email which is supplied to eligible Parents by the Council.

- 7.4.2 The Council will fund the place of any eligible child (provided they live in England) attending a Herefordshire early years setting on the NEF register where there is a valid letter/email of eligibility.
- 7.4.3 The Provider will need to ensure the start date on the letter/email has been checked. The Provider can claim from this date.
- 7.4.4 It is the Provider's responsibility to confirm a child's date of birth and proof of address and notify the LA immediately of any anomalies.

8: 3 & 4 year old NEF (15 hours)

- 8.1 All three and four year olds become eligible for the universal 15 hours of NEF across 38 weeks per year (or 570 hours stretched over more than 38 weeks of the year) from the term after the child's third birthday as per clause 6.3. Parents do not need to meet criteria nor apply; Parents simply make arrangements to access a placement with their Provider who will then claim on the families behalf. More information can be found on the Council website.

9: Early Years Pupil Premium (EYPP)

- 9.1 Additional funding is available to support early education that is provided for disadvantaged three and four year olds in receipt of an NEF universal placement. Families must meet criteria to be eligible for EYPP and the Provider will claim on behalf of the family. The criteria can be found on the Council website
- 9.2 Eligible children must be claiming NEF or attending a local authority maintained nursery class in order to attract EYPP but do not have to be taking up the full entitlement of funded hours.
- 9.3 Children confirmed as eligible for EYPP remain so for the three terms within the academic school year (September – July). If children turn four years old within this period they will not need to be re-checked.
- 9.4 Providers can apply at any point within a term for eligible children and pick up EYPP from that point onwards. Funding for eligible children will be aligned to the child's start date within the relevant term.
- 9.5 The Provider is responsible for identifying eligible children for EYPP and gaining permission from parents to apply. Providers are advised to keep a record of consent.
- 9.6 The Provider is required to apply for EYPP through the online Portal. Paper based applications must be completed for families who meet the extended criteria for EYPP and for children attending a maintained nursery class.
- 9.7 Providers can only draw down funding for eligible children. No exceptions will be made for non-eligible children.

- 9.8** Providers will be paid a rate of 53p per hour for EYPP eligible children against the universal 15 hours only. The total amount of EYPP paid to providers will be aligned to the actual number of hours taken by the child.
- 9.9** Providers will apply for the funding in the term that the child starts to be able to claim the EYPP for the child.
- 9.10** The Local Authority's Virtual School Head will have control over the EYPP budget for Looked After Children (LAC) and may contact you with regards to utilisation of spend.
- 9.11** EYPP funding will follow the child in accordance with NEF as outlined in clause 17.7
- 9.12** Providers must not use EYPP as a top up fee to the NEF rate
- 9.13** EYPP can be claimed by Providers rated by Ofsted as 'Outstanding', 'Good', 'Requires Improvement', 'Met' and yet to be inspected. 'Inadequate' and 'Not Met' rated Providers will have EYPP withdrawn as soon as is practicable in accordance with clauses 14.5 to 14.10.
- 9.14** Providers in Herefordshire can claim EYPP for any eligible children (living in England) attending their provision. An Exception to this is where a child attends a Herefordshire Provider but is Looked After under the corporate parenting of another local authority. The Provider will need to contact the appropriate local authority in order to claim EYPP in these circumstances.

10: 30 hours – Extended Childcare Entitlement for 3 & 4 year olds (15-30 hours)

- 10.1** Three and four year olds who are in receipt of the universal 15 hours could receive an additional 15 hours of NEF if the family meets the eligibility criteria. The full and extended criteria for the additional hours can be found on the Council website.
- 10.2** Parents must register and make an application to confirm eligibility for the additional 15 hours on the HMRC website www.childcarechoices.gov.uk. HMRC (who check and confirm eligibility) will send Parents a confirmation code (DERN) for successful applications. This code will need to be given by the parent to the early years provider who will verify it with the Council.

- 10.3** Providers **must** verify the 30 hour eligibility code (DERN) with the Council before confirming that additional funded hours can be accessed at the provision. The Council will confirm the validity of 30 hour eligibility codes through a Eligibility Checking Service to allow the Provider to offer an extended entitlement (30 hour) place for eligible three and four year olds.
- 10.4** Parents will be prompted by HMRC every three months to reconfirm the details on their application are accurate and that the child is still eligible for the additional hours. Parents who need assistance to apply or have issues with their eligibility or code should contact the HMRC Customer Interaction Centre on 0300 123 4097.
- 10.5** The Provider will need to acquire written consent from the Parent to be able to receive confirmation of the validity of the Parent's 30 hour eligibility (DERN) code from the Council. The parent declaration will include permissions for this purpose.
- 10.6** The Council will complete batch checks six times per year as per the table set out in clause 10.11 to review the validity of eligibility codes for children who qualify for the extended entitlement (30 hours). The Council will notify the Provider where a Parent has fallen out of the eligibility and of the grace period end date.
- 10.7** If a child is already taking their universal 15 hours and the Parent becomes eligible for the extended entitlement (30 hours) part way through a term, the additional hours will start from the term following the date on which the Parent received their confirmation code, as follows:
- Code received between 1st September and 31st December (autumn term)
 - Additional hours start from 1st January (spring term).
 - Code received between 1st January and 31st March (spring term)
 - Additional hours start from 1st April (summer term).
 - Code received between 1st April and 31st August (summer term)
 - Additional hours start from 1st September (autumn term).

Grace periods

10.8 A child will enter the grace period when the child's Parents cease to meet the eligibility criteria for the extended entitlement (30 hours) as determined by HMRC and set out in the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016.

10.9 A child who becomes ineligible during the first half funding block as set out in the table within clause 10.11 will be funded until the end of that funding block (31st March, 31st August, 31st December) or for as long as the child remains under compulsory school age, whichever is the shorter.

10.10 A child who becomes ineligible during the latter half funding block (up to the end of the funding block) as set out in the table within clause 10.11 will be funded until the end of the following funding block or for as long as the child remains under compulsory school age, whichever is the shorter.

10.11

Date Parent receives ineligible decision	Council's audit date (batch check)	Grace period end date
1 January – 10 February	11th February	31st March
11 February – 31 March	1st April	31st August
1 April – 26 May	27th May	31st August
27 May – 31 August	1st September	31st December
1 September – 21 October	22nd October	31st December
22 October – 31 December	1st January	31st March

11: Flexibility for NEF

- 11.1 The Provider shall make information about their offer and admissions criteria available to Parents prior to the agreement of a placement at the setting.
- 11.2 The Provider shall work with the Council and share information about times/ periods which they are able to offer NEF and the number of places on offer and current availability, this will support the Council to secure sufficient places to meet parental demand within the Council's area as outlined in the Childcare Act.

- 11.3** The Council will undertake sufficiency audits with Providers at least once a year. Providers can aid with sufficiency and informing Parents of the provision of childcare in the area as outlined in the Childcare Act 2006 (Provision of Information to Parents) (England) Regulations 2007.
- 11.4** If the Provider is unable to offer full entitlements to Parents, but operates over at least 38 weeks per year, the Provider shall inform Parents that they can take the remainder of their entitlement with another Provider.
- 11.5** If the Provider is open for less than 38 weeks of the year, the Provider shall make Parents aware that they can take up the rest of their entitlement with another Provider.
- 11.6** Parents can chose to split funded hours between multiple Providers regardless of ownership type, though no more than across two sites in the same day. This also includes being able to split NEF between local authority (Council) or school / academy controlled with any other Provider / ownership type as outlined in clause 3 of the Overview. Providers must ensure Parents who are accessing a 30 hour place between multiple Providers have identified the provision who is claiming for the universal NEF 15 hours on the Parent Declaration Form.
- 11.7** Where possible Providers shall offer flexible packages of NEF subject to the following parameters on flexibility:
- no session must be longer than 10 hours;
 - no session must start before 6.00am or finish after 8.00pm;
 - the minimum number of days the weekly entitlement can be taken is: across two days for 15 hours, or 3 days for 30 hours;

NEF can be offered:

- up to 52 weeks of the year. Example of a stretched offer: instead of 30 hours
 - over 38 weeks, a stretched offer could be: 23hrs, 45mins per week over 48 weeks.
 - outside school term times/ dates, even if offering NEF over 38 weeks only;
 - at weekends.
- 11.8** To meet the requirements of flexibility the Provider is encouraged (but has the discretion) to offer a stretch funded place beyond the minimum 38 weeks. If the Provider chooses as a parental option to commence with a stretched offer, they can only do so at the beginning of a term.

- 11.9** The Provider is also encouraged to offer children NEF places in continuous blocks and to avoid artificial breaks during the day where possible, for example over the lunch period. (Operational Guidance July 2017: <https://www.gov.uk/government/publications/30-hours-free-childcare-la-and-early-years-provider-guide>).
- 11.10** Children starting part way through a term should be offered a funded place based on the amount of funded weeks left in the term.

12: Partnership working

- 12.1** The Council supports partnerships on four levels between:
- 12.1.1** local authorities and Providers
 - 12.1.2** Providers working with other Providers, including childminders, schools and organisations
 - 12.1.3** Providers and Parents
 - 12.1.4** local authorities and Parents
- 12.2** The Provider will work in partnership with Parents, carers and other Providers to improve provision and outcomes for children in their setting.
- 12.3** The Provider will discuss and work closely with Parents to agree how a child's overall care will work in practice when the NEF place is split across different Providers, such as at a maintained nursery class and childminder, to ensure a smooth transition for the child.
- 12.4** Providers with children accessing NEF will be expected to work in partnership with key partners such as; Children's Centres Services, the Council, Health Visitors and any other professional relevant for the benefit of the child and family. Information should be shared where appropriate and in accordance with the Data Protection Act 1998.
- 12.5** Providers with Looked after Children (LAC) are required to ensure a Personal Education Plan (PEP) is in place by working in partnership with social workers, carers and health visitors. Information should be shared with the Virtual Headteacher as requested.

13: Special Educational Needs and Disabilities

- 13.1 The Council will strategically plan support for children with SEND to meet the needs of all children in its local area as per SENDs Code of Practice.
- 13.2 Providers shall ensure owners and all staff members are aware of their duties in relation to the SEND Code of Practice and Equality Act 2010.
- 13.3 Providers shall be clear and transparent about the SEND support on offer at their provision and make information available about their offer to support parents in choosing the right provision for their child.
- 13.4 The Council's SENDs Local Offer can be found on the council website
- 13.5 Providers will also be able to access the Early Years Inclusion Funding and DAF, subject to meeting the criteria outlined on the Council website:
https://www.herefordshire.gov.uk/info/200227/support_for_schools_and_settings/467/teaching_children_with_sen_and_disability/2

Social mobility and disadvantage

- 13.6 The Council works with partners and children centre services to ensure that disadvantaged children in the local area are identified and their additional needs are met.
- 13.7 The Provider shall ensure that it has identified the disadvantage children in their provision as part of the process for checking EYPP eligibility. The Provider will also use EYPP and other funding streams to provide effective support and improve outcomes for this group of children.
- 13.8 Providers will ensure all parents are aware of the criteria for the extended entitlement (30 hours) funding, including those currently with children eligible for 2 year funding.

14: Quality

- 14.1** The EYFS statutory framework is mandatory for all schools that provide early years provision and Ofsted-registered early years providers in England. The EYFS sets the standards that the Provider must meet to ensure that children learn and develop well and are kept healthy and safe.
- 14.2** Ofsted is the sole arbiter of quality for all Providers who offer NEF for two, three and four year olds.
- 14.3** If the Provider is judged by Ofsted as 'Good', 'Outstanding', 'Met', or who are yet to be inspected or if the Provider is a childminder registered with a childminder agency judged 'effective' the Provider can provide NEF places for eligible two, three and four year olds.
- 14.4** Providers who receive a 'Requires Improvement' rating from Ofsted, will only be funded to provide places for eligible two year olds should it be necessary to ensure sufficiency of childcare places in the area, but the Provider can still provide places for all three and four year olds.
- 14.5** If the Provider receives two consecutive 'Requires Improvement' ratings (includes Satisfactory) from Ofsted, or any version of consecutive ratings below 'Good', the Provider will not be authorised to claim funding for any new eligible two year olds from the date the Council is notified by Ofsted of the most recent inspection outcome. The Provider can continue claiming funding for any eligible two years olds still in attendance that the Provider had claimed for prior to the most recent inspection rating notification. All three and four year olds can still be claimed for.
- 14.6** If the Provider receives an Ofsted rating of 'Inadequate' or 'Not Met' the Provider may have their funding terminated in full for all children as soon as is practicable.
- 14.7** The Council may decide to continue to fund two, three and four year olds who were age eligible and for whom a claim was submitted for funding prior to Ofsted notifying the Council of an 'Inadequate' or 'Not Met' rating. This would be to assist families and children for the continuity of care, or if there is no sufficient childcare in the area. The Council will inform the Provider by letter of funding arrangements after receiving notification from Ofsted of the inspection outcome.
- 14.8** In the event the Council continues some funding as outlined in clause 14.7, the Provider rated 'Inadequate' or 'Not Met' will not be authorised to claim for two, three and four year olds who were not already eligible and for whom a claim was not submitted for funding prior to Ofsted notifying the Council of the 'Inadequate' or 'Not Met' rating. The Provider is responsible for ensuring that Parents are informed of the outcome of the inspection and implications regarding NEF places. On occasions the Council may deem it appropriate to

directly inform Parents of the conditions of the removal of NEF and the reasons why.

- 14.9** If the Provider who is rated 'Inadequate', 'Not Met' or 'Requires Improvement' the Provider must engage with their Early Years Improvement Advisor and attend training as identified in an agreed action plan for improvement and explore the next steps required to improve the rating, so NEF can be reinstated.
- 14.10** If the Provider has two consecutive 'Inadequate' or 'Not Met' ratings (or any variation of the two ratings) from Ofsted the Provider will have funding terminated and support withdrawn with immediate effect. The Council will also terminate funding from an 'Inadequate' or 'Not Met' Provider if the deadline for enforcement actions, as stipulated by Ofsted, has not been met.
- 14.11** If the Provider has been suspended by Ofsted the Provider will have NEF terminated with immediate effect. Immediate termination of NEF will also occur when concerns are raised at an inspection for child protection and safeguarding and if a Provider receives Inadequate in all categories of the Ofsted inspection.
- 14.12** The Council will accept evidence such as an Ofsted report which confirms the Provider is no longer rated as 'Inadequate' or 'Not Met' or has consecutive ratings that are less than 'Good'. Funding will be reinstated from the date of the Ofsted inspection. If a new Agreement has been released during the period of NEF removal, the Provider will need to agree to the new conditions by completing, signing and returning the new Agreement for NEF to be reinstated.
- 14.13** The Council will consider information from Ofsted about a Provider before agreeing for NEF to commence at a new registration. This includes review of the history of a Provider, previous ownership or at a particular address.
- 14.14** Providers must comply with the EYFS 2017. If a Provider is under investigation by Ofsted or the Council's Specialist Safeguarding Unit for matters that include the safeguarding and welfare of children or extremism, the Council will suspend funding with immediate effect. A decision will be made if funding will be reinstated based on the findings of such an investigation
- 14.15** If the Council has reason to believe that a Provider is not promoting fundamental British values of democracy and is promoting views and theories contrary to established scientific or historical evidence, the Council in conjunction with Ofsted will investigate concerns and funding will be suspended until that investigation is completed. Funding will be reinstated if the regulator (Ofsted) or any other

authority deems there are no concerns or actions against the Provider.

- 14.16** The Provider must be registered with Ofsted or must provide the Council with evidence that they are exempt from the requirement to register with Ofsted for funding to commence. If the Provider is exempt from Ofsted registration the Provider must inform the Council of their provision and ownership.
- 14.17** If the Provider whose provision is categorised by Ofsted as 'Outstanding' the Provider is encouraged to work with other Providers to support improvement.
- 14.18** The Council will work with partners i.e. Families First ,Targeted Services, to determine if a vulnerable child claiming NEF should be removed from a Provider who has an 'Inadequate'/'Not Met' Ofsted rating.

15: Financial Accountability / Business Planning

- 15.1** Providers must complete all relevant paperwork/processes, manual and electronic, to submit headcounts in the times and periods requested.
- 15.2** Providers must allow for representatives of the Council that could include the finance/NEF Officers, Early Years Officers to visit the premises at reasonable times and make available records upon request as part of audit compliance.

This will ensure that the Provider is using public funds such as NEF and EYPP in an appropriate and lawful manner, and in accordance with the terms of this Agreement and the DfE Statutory Guidance.
- 15.3** Over claimed monies for NEF places as outlined in clauses 15.4,15.16, 17.6,17.7,17.8 and 17.9 will be reclaimed by the Council.
- 15.4** Providers who have knowingly submitted fraudulent claims and received payment, will have their Agreement terminated and the Provider will be removed from offering NEF and will be reported to the appropriate authorities where there is evidence to support such a claim.
- 15.5** The Provider is required to maintain a specific bank account for their provision, and funding will only be paid into this account.
- 15.6** Providers must securely retain records regarding children for whom NEF was claimed, for a minimum period of 6 years after the child has left the provision.
- 15.7** The Provider is solely responsible for submitting accurate details of children and claims on time as requested by the NEF Officer. New electronic submissions will be implemented by the Council from

September 2017 onwards and providers must submit details of children and claims electronically as requested by the council to ensure prompt payment. Failure to do so will result in payments to the Provider being delayed. Providers can only submit claims for children who are already age eligible or will be age eligible in the next scheduled Council payment run.

15.8 The annual Early Years Census must be completed in full by the Provider at the time requested by the Council. The parameters of the Census are determined by the Department for Education. Advanced notice will be given to Providers; failure to complete and return the Census in full and within the timeframe stated by the Council will result in funding to the Provider being withheld until the Census is completed in full and returned to the Council.

15.9 The Early Years National Funding Formula determines the baseline and deprivation rates that the Council uses to fund Providers for NEF. The funding rates for Herefordshire are:

3 & 4 year old rates:

Base Rate: £3.90 per hour base rate plus;

Rurality Supplement – Rurality supplement will remain. This means that every setting delivering at least 100 hours of NEF per week will continue to receive £50.00 per week over 38 weeks. (This equates to a lump sum of £1,900 per year on top of the basic hourly rate you will receive).

For those that deliver less than 100 hours of NEF per week (fewer than 7 children) it equates to 50p per hour of NEF.

Deprivation supplement – 30p per child per hour (*for all EYPP eligible Children*)

2 year disadvantaged rates: £5.20 per hour

15.10 If the child is taking a NEF place as a 38 week placement only, the funding must be deducted by the Provider over the 38 weeks only. The Provider must not invoice Parents on a stretch basis unless the child is actually taking a NEF place on a stretch basis.

15.11 The Council will set out a timetable so Providers are aware in advance of key dates, namely when headcount claims need to be submitted and when payments are planned to occur. This will include the number of weeks Providers will be paid.

15.12 The Provider will ensure they submit timely and accurate information, including but not limited to; headcount data, census and sufficiency data, parental declarations and invoices, as per the financial guidelines of the Council. Failure to do so may risk a financial penalty, delayed or suspended funding for the Provider

15.13 The Council will not charge Providers disproportionate penalties for providing late or incomplete information leading to additional

administration in the processing of NEF. Any charges shall be proportionate to the inconvenience or costs incurred to the Council as a result of late or non-return of information. The Council will ensure charges are clearly communicated to the Provider.

- 15.14** The Provider will maintain accurate financial and non-financial records relating to NEF places and will give the Council access on reasonable notice to all financial and non-financial records relating to NEF places funded under this Agreement, subject to confidentiality restrictions.
- 15.15** The Council will pay Providers monthly if registered for NEF from the beginning of the term and if the Provider has returned headcount claims on time as specified by the Council's.
- 15.16** The Provider must inform the council and NEF Officer immediately if they are closing down or changing ownership, so payments can cease on the appropriate date. Any over payments made by the Council due to the provisions closing must be returned by the Provider. Non-returned over-payments will be passed to debt recovery.

16: Charging

- 16.1** NEF hours/ sessions for two, three and four year olds must be delivered free of charge to Parents at the monetary value determined by the Provider
- 16.2** It is at the Provider's discretion as to how they offer NEF to children and families in line with their own business model. The Provider must determine and publish their admissions criteria and times of the day that NEF hours can be taken at the provision in line with the parameters outlined in clause 11.
- 16.3** The Provider can charge for hours that the child attends for and where the provision does not offer/ supply NEF. The Provider can also charge for optional consumables, which include but not limited to: nappies, trips, food/ drinks and any other services.
- 16.4** It must not be a condition that Parents purchase additional hours, food, nappies, trips and food/drinks or other consumables or services to gain access to an NEF placement for their child.
- 16.5** If the Provider requests for voluntary contributions from Parents the Provider must clearly outline the purpose for the contribution. Contributions must not be a condition of a Parent gaining access to an NEF place for their child as outlined in 16.4
- 16.6** Providers can charge Parents a deposit to secure their child's funded place. The deposit can be kept if the child does not start the placement. Providers are encouraged to use their discretion when charging deposits for families who are low income households or disadvantaged, specifically families on a 2 year funded placement.

- 16.7** Providers cannot charge “Top Up” fees or require Parents to pay a registration or administration fee as a condition of taking up their child’s funded place.
- 16.8** Childminders can charge for picking up and dropping off services and if they offer an on call service to Parents if a child (accessing a NEF placement) at another Provider has be collected unexpectedly.
- 16.9** Additional hours purchased by Parents and any other charges for services taken should be in line with the Providers’ standard pricing structure and as outlined to Parents before the commencement of their child’s NEF placement. Providers must also inform Parents if fees and childcare costs change at the provision throughout the year.
- 16.10** Regarding Parent invoices, the Provider must itemise the total NEF hours supplied to the child and/ or the total monetary value of NEF hours for the invoice period. The Parent invoice will also include (if taken) the itemised breakdown of any charges for additional hours, food, nappies, trips or any other consumable or service that the Parent has taken and that the provision charges for. This is so the Parent can clearly identify the funded place has been applied as agreed and claimed for by the Provider and so the Council can easily distinguish this in any Provider/ Parental dispute or audit.
- 16.11** The Provider will deliver NEF consistently to all Parents, including disadvantaged families, regardless of whether they opt to pay for additional hours, optional services or consumables. This means the quality, flexibility and security of a place for each child placement offered by the Provider will be consistent for all Parents.
- 16.12** The Provider can only claim for the NEF hours that have been agreed with Parents that the child will be in attendance for. The Provider should refer to clause 17.7 in relation to actions and responsibilities if child attendance falls below what has been claimed for.

17: Compliance

- 17.1** The maximum entitlement of funding for a child as set out in clause 2 of the Overview must be taken within a 52 week period. No more than 15 hours per week can be taken for eligible 2 year olds or the universal entitlement, and no more than 30 hours in a week for a child eligible for the extended 3 and 4 year entitlement.
- 17.2** The Provider has the responsibility to ensure all their relevant staff who handle admissions into the provision is aware of the conditions of this Agreement and that such staff are aware of the NEF package the provision offers to Parents.
- 17.3** The Provider must publish their offer of NEF places in advance of children taking up a placement (and the expected monetary value/saving). This includes how a NEF place can be taken, term time only or 'stretched' and the hours of the day that are classed as funded. Parents must clearly see that they are receiving the child's entitlement for the equivalent claimed for NEF hours.
- 17.4** The Provider is responsible for ensuring a child is age eligible for a funded place and ensure all Parents/ legal guardians sign, understand and receive a copy of the conditions of the Parent Declaration Form.
- 17.5** Where a dispute cannot be resolved between Providers and Parents as to which Provider claims a funded place, the Council will split funded hours equally amongst the Providers involved and so long as the child has been in attendance for the amount of hours to be shared equally.
- 17.6** For children who leave during the term; the funding will follow the child to the new provision (if applicable). If a child has left the Provider it is the responsibility of that Provider to inform the Council's NEF Officer with immediate effect of the last date of attendance; any over-claimed funding will be reclaimed by the Council.
- 17.7** Providers must maintain an up to date record of attendance for all children for whom they provide NEF places and make it available to the Council when required along with other monitoring information. The Council shall ensure that Providers are not penalised by withdrawing funding for short term absence, but it shall use its discretion in relation to recurring or extended -periods of absence. If a child has been absent and not attended any amount of NEF hours over a 4 week period (consecutively or sporadically) within the same term, the Provider must contact the NEF Officer

- 17.8** The Council will not fund the Provider when parents breach any notice period stipulated in the Provider's own contract with Parents. This is a private matter between the Provider and Parent to resolve.
- 17.9** On days where the Provider is unable to operate or is closed for example: due to training, bank holidays, time off, sickness or adverse weather conditions, the Provider can offer an alternative day to the NEF hours missed by children on that day. However, if it is not practicable for Providers to do this, NEF hours must be used and accounted for on the day of closure in the same manner as if the Provider was open and children attended.
- 17.10** On days where a child is absent, for example due to sickness, holiday or adverse weather conditions; it is at the discretion of the Provider whether to offer the NEF hours at an alternative time. However where this is not practicable the Provider must use the NEF hours as if the child was in attendance.
- 17.11** The definitions of childcare and early years provision, under sections 18 and 20 of the Childcare Act 2006, specifically exclude a child's relatives from claiming NEF. This also means childminders cannot claim for children who are relations, this includes when a registered childminder is providing foster care to a child. Claiming in such circumstances could be considered as a fraudulent claim and all monies will be re-claimed by the Council.

18: Dispute Resolution Appeals and Termination

- 18.1** If any dispute arises between the parties out of, or in connection with, this Agreement, either party may at any time serve a notice in writing on the other party that a dispute has arisen. The notice must include reasonable information as to the nature of the dispute.
- 18.2** The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 18.2.2** Within 10 days of service of the notice the representative of the Provider and the Early Years Policy & Strategy Manager shall meet to discuss the dispute and attempt to resolve it.
- 18.2.3** If the dispute has not been resolved within fourteen days of the first meeting of the managers then the matter shall be referred to the strategic lead who will meet within fourteen days to discuss the dispute and attempt to resolve it. Failure to resolve the dispute will mean a final decision will be made by the Herefordshire Early Years Strategy Group Board.

- 18.3** Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies:
- 18.3.1** The Council may terminate this Agreement for any reason with immediate effect or longer by giving written notice to the Provider.
- 18.3.2** The Provider may terminate this Agreement for any reason by giving written notice to the Council.

19: Freedom of Information & Data Protection

- 19.1** The Parties acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- 19.2** The Provider shall (and shall procure that its Staff) comply with any notification requirements under the DPA and shall duly observe its obligations under the DPA which arise in connection with this Agreement.
- 19.3** The Provider will maintain formal procedures/ systems for the keeping of accurate records that fully comply with any statutory obligations.

20: General

- 20.1** No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.
- 20.2** Save where otherwise expressly stated herein, any person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 20.3** This Agreement constitutes the understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the parties.
- 20.4** Each of the parties warrants to one another that they each have full power and authority to enter into this Agreement and carry out their obligations.
- 20.5** This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by and interpreted in accordance with the exclusive law of England and Wales

21: Complaints and Appeals

- 21.1** If the Provider believes that the requirements of the law, the Statutory Guidance or this Provider Agreement are not being met they can in the first instance complain in writing to: The Information Access team;

Herefordshire Council
Information Access Team, Plough Lane, PO Box 4,
Hereford HR4 0XH
Email: acesstoinformation@herefordshire.gov.uk

- 21.2** Providers shall ensure they have a complaints procedure in place that is published and accessible for Parents who are not satisfied that their child has received the NEF in the correct way, as outlined in this Agreement and in the Early Education and Childcare Statutory Guidance for Local Authorities.
- 21.3** Where the Parent is not satisfied that their child has received the NEF and who is not able to resolve their concern directly with the Provider in accordance with legislation or as set out in this Agreement and in Early Education and Childcare guidance for Local Authorities, the Parent can complain in writing to the address set out in clause 21.1.
- 21.4** If a Parent or the Provider is not satisfied with the way in which their complaint has been dealt with by the Council or believes the Council has acted unreasonably, they can make a complaint to the Local Authority Ombudsman. Such complaints will only be considered when the local complaints procedures have been exhausted.

Appeal Process

- 21.5** Providers may be denied approval to offer funded places or have their funding withdrawn for a number of reasons that include quality of care provided, or other factors related to the ability of the Provider to adhere to the framework set out in this Agreement and other relevant documents.
- 21.6** Providers can appeal against a decision to refuse access to NEF, or the removal of NEF by writing in the first instance to the Council's Customer Feedback and Complaints Team at the address in 21.1.
- 21.7** The Council's complaints process can be viewed on the council website.

22: Useful Contacts

Julia Stephens Early Years Policy & Strategy Manager: Tel: 01432 383041

jstephens@herefordshire.gov.uk

Alison Murphy Lead Improvement Advisory Early Years: Tel: 01432 260844
07792 881141

amurphy@herefordshire.gov.uk

Sheryl Norman: NEF Transactional Officer: 01432 383274

Sheryl.Norman@hoopleltd.co.uk

Keep for Your Record

Sign and keep this copy / document for your records

The person legally responsible for your establishment must sign the following declaration:

- I certify that this provision conforms to all the conditions of eligibility for registration for 2017-2018 and that this Provider will ensure all elements are met.
- I have read carefully the various documents referred to in this Agreement.
- I agree to the terms and conditions in the Provider Agreement 2017-2018.
- Understand that, as a Provider if we fail to meet the conditions set in this Agreement, the Council may terminate funding and/or require repayment of funding the Provider has been paid in respect to the provision of Nursery Education Funded places.

Provider Name: _____

Contact Name: _____

Position: _____

Signature: _____

Date: _____

23: Provider Declaration

Complete and return to Alison Murphy, Lead Improvement Advisor (Early Years) - Pages 27-29

Provider Agreement 2017 – 2018:

Delivering Nursery Education Funding (NEF) for 2, 3 and 4 year olds.

Please complete this section in **BLOCK CAPITALS** and in **BLACK INK**

Provider Name:	
Provider address (include postcode) -where children attend	
Name of person in charge and position: e.g. manager/ owner	
Person responsible for submitting NEF claims: e.g. bursar/ admin officer	
Provider Telephone Number:	
Provider email address:	
Funding Start Date - (to be completed by new registrations for NEF only):	
Provider sector (please tick one only)	<input type="checkbox"/> Privately Owned <input type="checkbox"/> Voluntary/Committee run <input type="checkbox"/> Childminder/Agency <input type="checkbox"/> Governor Run – LA Maintained School <input type="checkbox"/> Governor Run – Academy Run School <input type="checkbox"/> Independent school
Provider Type	

(e.g. Nursery)			
Ofsted Registration Number (Not applicable if exempt.)			
Correspondence Details /Address: (If different from Provider address)			
Telephone number:			
Email address:			
Please specify the start and end times of the provision.	Day	Start time	End time
	Monday		
	Tuesday		
	Wednesday		
	Thursday		
	Friday		
	Saturday		
	Sunday		
Total Number of weeks NEF offered (i.e. 38 weeks).			
Places offered for Nursery Education Funding			
Maximum number of 2 year old NEF places:			
Maximum number of 3 & 4 year old NEF places:			
Vacancies available for Nursery Education Funding			
Vacancies available for 2 year olds:			
Will the provision offer extended entitlement (30 hour)places?	<input type="checkbox"/>	YES	<input type="checkbox"/>
			NO

**Complete, sign and return to Alison Murphy
Lead Improvement Advisor (Early Years)**

The person legally responsible for your establishment must sign the following declaration:

The person legally responsible for your establishment must sign the following declaration:

- I certify that this provision conforms to all the conditions of eligibility for registration for 2017-2018 and that this Provider will ensure all elements are met.
- I have read carefully the various documents referred to in this Agreement.
- I agree to the terms and conditions in the Provider Agreement 2017-2018.
- Understand that, as a Provider if we fail to meet the conditions set in this Agreement, the Council may terminate funding and / or require repayment of funding the Provider has been paid in respect to the provision of Nursery Education Funded places.

Provider Name: _____

Contact Name: _____

Position: _____

Signature: _____ **Date:** _____

Alison Murphy: Lead Improvement Advisor Early Years

Learning & Achievement Service
Children's Wellbeing Directorate
Herefordshire Council
Plough Lane Offices
Hereford
HR4 0LE

Herefordshire Council office use only:

- Application approved 2 year NEF Application approved 3 & 4 year NEF
- Application rejected (indicate reason) _____

