



**Sure Start, Early Years and  
Childcare Grant  
and  
Aiming High For Disabled  
Children Grant**

**Capital Guidance**



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## INTRODUCTION

1. The purpose of this revised capital guidance is to assist local authorities to plan, develop and deliver the capital programme funded through Sure Start, Early Years and Childcare Grant (SSEYCG) and Aiming High for Disabled Children (AHDC) Grant. The guidance has also been updated to clarify frequently raised issues such as: the use of SSEYCG to build on school sites; the conditions and length of leases and circumstances that may lead to claw back of the grants.
2. This guidance is intended to provide advice on policy issues, serve as a reference tool on capital issues and act as a signpost to further information and resources.
3. It is primarily aimed at local authorities' Directors for Children's Services (DCSs), Sure Start Children Centres Managers, Heads of Early Years settings, school heads, and nursery providers in local authorities. It is also available for use by providers in the private, voluntary and independent sector, including childminders. This guidance should be circulated and used by local authority personnel and other officials involved in the delivery of projects using funds provided through the SSEYCG and AHDC grant.
4. This guidance should be read in conjunction with the relevant documents mentioned below. The web link for each guidance is provided to enable access.
5. 2009-10 Memorandum of Grant and capital allocations spreadsheet  
<http://www.dcsf.gov.uk/everychildmatters/research/publications/surestartpublications/1925/>
6. Aiming High for Disabled Children (Short Breaks) guidance  
<http://www.everychildmatters.gov.uk/resources-and-practice/IG00319>
7. Sheila Scales' letter of 30<sup>th</sup> November 2007  
<http://www.dcsf.gov.uk/localauthorities/index.cfm?action=content&contentID=11323&categoryID=75&subcategoryID=106>
8. Beverley Hughes letter of 26 February 2009  
<http://www.dcsf.gov.uk/everychildmatters/publications/documents/sshughes/>
9. Beverley Hughes letter of 13<sup>th</sup> May 2009  
<http://www.dcsf.gov.uk/everychildmatters/publications/documents/laecaptailfundingletter/>
10. Managing Public Money  
[http://www.hm-treasury.gov.uk/d/mpm\\_whole.pdf](http://www.hm-treasury.gov.uk/d/mpm_whole.pdf)



## **FINANCE POLICY AND PROCESSES**

### **Memorandum of Grant**

11. The 2009-10 Memorandum of Grant (MoG) issued in February 2009 provides detailed information on the objectives of the Sure Start, Early Years and Childcare (SSEYCG) and Aiming High for Disabled Children (AHDC) grants. The MoG also detail the activities the grants are intended for and the appropriate terms and conditions which each local authority must accept before funding is released.
12. Each local authority has the autonomy to spend flexibly within each funding block set out in the MoG. However, there is no scope to switch funds between the funding blocks. In addition, it is not permissible to move funds between revenue and capital allocations. The 2009-10 MoG is available on the website and can be accessed using the link provided in paragraph 5 of this guidance.
13. The SSEYCG main capital allocation is available to deliver the policy objectives for:
  - Sure Start Children's Centres;
  - Childcare, Quality and Access; and
  - Workplace Nurseries in participating local authorities.

14. It is for each local authority to decide how best to maximise the resources provided and how to utilise the capital funding available to achieve the aims and objectives set out for each programme.
15. The AHDC capital grant is available to deliver the policy and objectives for Short Breaks.

### **Capital funding allocations: 2008-09 to 2010-11**

16. The capital allocations for the current spending review period from 2008-09 to 2010-11 are available on the Every Child Matters website through the link available in paragraph 5 above.

### **Payment and monitoring arrangements**

17. The 2009-10 MoG set out the terms and conditions for SSEYCG and AHDC capital payments which are due on a quarterly basis at the end of May 2009, August 2009, November 2009, and February 2010. Payment will be made on the profile provided by local authorities with an adjustment for actual expenditure incurred in the preceding quarter. Full details of the claim process including the claim forms were circulated to all local authorities with the MoG in February 2009. AHDC capital grant will be paid similarly to revenue funding in four equal instalments where the conditions for payment are met.
18. Local authorities are required to complete their quarterly capital claim form on the EC Harris web portal (also known as Sure Start\_On). In addition, each local authority must send to the Department, the original certified quarterly claim forms, including nil returns before capital payments can be made. It is also vital that the completed claim forms provide realistic expenditure forecasts for the whole financial year. It would be helpful if local authorities would:
  - Avoid submitting zero forecasts where there is the intention to incur expenditure in the financial year. In a situation where a zero claim is submitted for the current quarter, we would still expect realistic forecasts to be provided for the remaining quarters in the year.
  - Avoid submitting a claim for the current quarter with zero forecasts for the rest of the year, unless it is expected that nil expenditure will be incurred for the rest of the year.
  - Submit a realistic forecast even if this is less than the capital allocation. Where forecasts seem unrealistic in relation to spending pattern, the Grants Management Team will challenge forecasts provide by local authorities and this could result to delays in making the quarterly payments.
19. For Sure Start Children's Centres, local authorities will be required to enter the capital project details and monitoring information on the web portal system at <http://onsurestart.portal.echarris.com/apps/secu/ui/Login.aspx?ReturnUrl=%2f>

[Default.aspx](#). It is important to ensure the up-to-date record is held and maintained on the EC Harris web portal.

20. For SSEYCG main capital projects not related to a Sure Start Children's Centre, local authorities are required to enter basic monitoring information such as: the name and description of the setting; setting type; sector on the EC Harris web portal system to record other capital assets created through SSEYCG capital funding. It is not necessary to create individual records for each setting. Where applicable, similar funding descriptions can be grouped under the heading 'various' on the web portal.

## GENERAL CAPITAL GUIDANCE

### Definition of capital expenditure

21. Capital expenditure is defined as expenditure incurred on the acquisition of a tangible, productive asset, whose minimum value exceeds £2,500 (including VAT) and which will give continuous service for more than 12 months. The asset purchased is expected to provide service beyond the financial year in which it was acquired. The general rules for deciding if expenditure is capital are:
- Will the asset last more than one year?
  - Will the local authority own the asset or have a charge on the asset? If there is a rental agreement for the local authority to have access to an asset this is deemed to be revenue, not capital expenditure.
  - Does the asset cost more than £2,500 including VAT or does it enhance an existing asset? This does not include routine maintenance, which is classified as revenue expenditure.
22. Capital expenditure is not necessarily restricted to single purchases costing more than £2,500. The following categories of expenditure are deemed as capital:
- Individual assets: This is the expenditure incurred on a single item with a value which exceeds £2,500, including VAT. Some examples include the purchase of vehicles, computer servers, land, buildings and consultants' fees if they are an integral part of, and specific to, the acquisition and can be assigned to a tangible asset.
  - Grouped assets: This is the expenditure on assets of a similar nature purchased or ordered at the same time as part of a project. Example include, the cost of fitting a kitchen, a children's play area, or a playroom in a childcare setting. This can also include consultancy costs or project management costs incurred as part of delivering the project. In this instance, the value of the individual assets may in isolation fall below the capital expenditure threshold but the total value of all the grouped items must exceed £2,500 before they can be classified as capital expenditure.
  - Bulked assets: This is expenditure incurred on a bulk purchase of the same or similar items. Some examples include, purchase of furniture or computer assets where the value of individual items is below £2,500. Similar to grouped assets, the total value of the assets determines how it is classified and can be deemed to be capital expenditure if the cost exceeds £2,500.



## ASSET MANAGEMENT: OWNERSHIP OF CAPITAL ASSETS

### Types of ownership - buildings (capital)

23. Freehold – This refers to the ownership of the building and the land it stands on until it is sold. In a situation where the land is owned by another party, leasing arrangements must be put in place for use of the building and / or land unless the owner of the land is either selling the land or providing it as a gift.
24. Leasehold – All leasehold arrangements consist of an agreement to allow someone to occupy a property for an agreed length of time in return for payment of rent (revenue). There should be a contractual agreement in place which sets out the duration and the terms and conditions of the lease.
25. Some leases, particularly longer ones, have an upfront payment known as a premium which is used to purchase the right to occupy the building for an agreed number of years. Capital funding can be used to pay the premium. If money has been paid upfront, in the manner of a purchase, then the rent would be expected to be much lower (a ‘peppercorn rent’ of a very low or token sum). The peppercorn rent will be deemed as revenue.
26. Expenditure incurred for a finance lease can be classified as capital where the nature of the agreement means the risks and rewards of ownership are transferred substantially to the lessee. Where a lease is agreed, it should usually offer better value for money or greater protection for public funds.
27. It is acceptable to use capital expenditure to secure a leasehold asset where the duration of lease is 25 years or more. However, longer lengths of lease may be acceptable depending on the contractual agreement between the lessee (the party bearing the risks and receiving the rewards) and the landlord or owner of the property.
28. It is also possible to provide a lease of less than 25 years (see paragraphs 31 and 32) but LAs will need to seek the Department’s approval before signing a lease agreement shorter than 25 years. You should seek legal advice from within your LA or contact the Department via the capital email at [Capital.SURESTART@dcsf.gsi.gov.uk](mailto:Capital.SURESTART@dcsf.gsi.gov.uk) if you have any doubts about a lease contract being considered before an agreement is reached.
29. The minimum period for a lease should be at least a year. Termination of a lease before the agreed end date will be deemed to be a disposal unless the assets involved are transferred to another party to continue to provide services for children and young people. Further information on the disposal of a capital asset is available in paragraphs 35 to 38 below.
30. Rent payments related to leasing arrangements are classified as revenue expenditure. This is because capital expenditure is intended to create tangible assets for the benefit of Sure Start, Extended Years and Childcare in the longer term.

## **Length of ownership of capital assets**

31. Capital assets have a defined economic useful life depending on their nature and type. For freehold land and buildings, the useful life will normally be for a minimum of 25 years. However, a lease tied to the use of a building may be for a shorter period of time but this must be set out clearly in the lease and the risks and rewards must rest with the lessee to enable the lease to be capitalised. The lease arrangement should also include a clause setting out what happens if a provider terminates the lease before it is due to end and other relevant circumstances.
32. It is acceptable to enter into a lease agreement with shorter duration. This will be applicable for items other than buildings. The length of such a lease would depend on the asset concerned and its expected economic useful life. For example, for computers and refurbishments, the economic useful life is likely to vary considerably with computers becoming obsolete quickly.
33. The economic useful life of a capital asset should reflect the length of time that it is expected to be in use and is usually reflected in the period used to set out its depreciation. In most cases, the standard terms applied by each local authority should serve as a guide to agree the expected useful life of similar individual capital assets purchased with funds provided by the Department for Children, Schools and Families.
34. The Department intends to derive full economic benefit for assets purchased with the funds it provides. The length of economic benefit applied to each asset will vary according to the nature and type of the asset and will determine the duration for which clawback provisions should apply.

## **Disposal of capital assets funded by DCSF**

35. Disposal means a sale, transfer of a capital asset, or a change of a use of a capital asset from its original intention. Disposal also includes the transfer of ownership of a lease, or freehold assets. Where an asset has previously been created for Sure Start local programmes, or other DCSF programmes, the appropriate accountable body is liable and must notify and consult with the Department about any proposal to dispose of it.
36. Local authorities must notify and consult with the Department, about any plan to transfer, dispose of, or change the use of buildings or any other tangible fixed assets which has a current market value of more than £2,500. This is applicable to all assets acquired in full or partly by any of the Department's capital grants. The Department should be notified at least three months prior to the date the proposed disposal is intended to take place.
37. Subject to prior approval with the DCSF, there will be no clawback of the grant where an asset is sold and the proceeds are reinvested in another asset for a similar purpose consistent with Sure Start, Early Years and Childcare aims.
38. Where the asset being disposed is a building, the market value of the asset should be determined and confirmed by the district valuer and a second,

independent valuer prior to disposal. The district valuer must also confirm that the best possible value was obtained after any disposal. The same applies if the ownership of the asset is transferred with no change of use. If the asset being disposed of is not building, we expect local authorities to determine the value of the asset by applying their internal policies and procedures for asset valuation and use this to inform the Department.

### **Invoking clawback**

39. Clawback of funding is triggered where an asset funded wholly or partly by the Department is disposed of or the asset is no longer used to meet the aims and objectives consistent with the SSEYCG or AHDC grant.
40. Where the asset is valued at the same level or less than the initial grant contributed, we would expect the clawback amount to be the full market value obtained from the disposal of the asset, proportionate to the level of the Department's contribution to the original costs of the asset concerned.
41. Accountable bodies should make provision on the presumption that clawback will be enforced by the Department if a capital asset it funded fully or in part is sold or otherwise disposed of. The only exception is where a specific written consent has been obtained from the Department prior to the disposal, for the clawback to be waived or deferred.
42. In circumstances where the funds received from the Department are allocated to third parties, it will be entirely up to each local authority, as the accounting body, to decide whether a clawback arrangement should be put in place as part of the agreement with the third party. Depending on the asset, accounting bodies may want to consider having a clawback agreement which shows a reducing proportion or percentage over a determined number of years synonymous to the useful economic life of the asset. A lack of clawback agreement with a third party does not preclude the Department from applying clawback to the local authority.
43. Where an asset has been funded using grant provided by the DCSF grant and a commercial loan, special conditions may apply to how clawback is applied. This may also be the case where a DCSF asset is leased rather than sold. However, we cannot give a definitive list of the circumstances in which clawback will be waived or deferred. Each case will be considered individually and where necessary, the Department should be contacted for advice.
44. Further information about clawback is available in Managing Public Money Annex 5.2 at [http://www.hm-treasury.gov.uk/psr\\_mpm\\_index.htm](http://www.hm-treasury.gov.uk/psr_mpm_index.htm) Additional interpretation of the guidance in specific circumstances is provided in appropriate sections of the guidance relating to the SSEYCG and AHDC capital grant.

### **Assets register**

45. The grants terms and condition requires each local authority to maintain an asset register for all capital assets financed wholly or in part by funds provided through the SSEYCG or AHDC grant. This register should also

incorporate the existing asset registers from Sure Start Local Programmes in its area.

46. Local authorities are still required to maintain a record of capital assets purchased with funds allocated to third parties. This includes funds provided to the private, voluntary and independent sectors. It is not always practical for these assets to be recorded on the local authority's asset register but there must be an audit trail and adequate information to monitor the use of the asset and / or any disposals.
47. Internal audit requirements clearly state the accounting body is responsible for ensuring the systems governing the grants provided by the Department are sufficient. The systems maintained by each local authority are subject to independent review to obtain assurance on the adequacy of the system of internal control and to safeguard against fraud.

### **Carrying forward unspent capital funding**

48. We will be able to offer carry-forward of unspent capital from 2008-09 into 2009-10 and there is also provision to carry forward unspent funding from 2009-10 into 2010-2011, within the current spending review period. We are unable to approve carry-forward of unspent amounts beyond 2010-11.
49. Local authorities are expected to utilise all their SSEYCG and AHDC capital grants by March 2011 at the very latest. There is no provision to spend either the SSEYCG or AHDC grant beyond March 2011. All relevant expenditure relating to the SSEYCG projects, including fees and retention costs must also be claimed by March 2011.
50. As stated in the 2009-10 MoG, carry-forward amounts from 2008-09 into 2009-10 will not be confirmed until each LA has submitted a valid, audited, Annual Financial Statement for the financial year 2008-09 because it is only at that stage we are able to determine the amount of underspend accrued and available to carry forward into subsequent years.
51. In a situation where the carry-forward amount is not spent after being allocated, we will recover the grants overpaid by setting it off against your quarter 4 payment in the following financial year.

### **Early draw down of capital allocation**

52. We acknowledge there could be instances where a local authority is progressing ahead of its delivery schedule and may require future funding to meet its targets. The Department will consider requests to draw down future allocations, but before such requests can be approved we must ensure all available capital grants have been utilised. This will include using the flexibilities already available within the Main Capital block. In addition local authorities should also ensure that all carry forward amounts from the previous year have been utilised or committed. We will consider both of these issues when deciding if we can agree to a request to bring forward any future capital allocation.

53. When a request is made, local authorities should note that they will be expected to provide further information with details on capital commitments before the request will be considered. Each request will be decided on a case by case basis on its merits.

## **TYPES OF COST**

### **Professional fees**

54. Professional fees are generally included in building contracts. The Department would expect such costs to be paid from capital funding where it relates to the creation or provision of a capital asset. However, where the fees are incurred in the very early stages of a capital programme, relating to the Inception and Strategic Briefing stages (RIBA Stages A-B), it is acceptable to pay for these through revenue funding. This is applicable in a situation where the costs incurred cannot be assigned to a specific capital asset, or project. For example, an options appraisal may be carried out on a number of sites or locations, before selecting the suitable site for the development of a specific project. This may include fees incurred in the very early stages of planning the capital portfolio which are not directly related to specific capital assets.
55. Each local authority must always check its own financial measures and regulations before assigning particular types of funding. The level of building consultants' fees varies in percentage terms depending on the nature of the work. Fees are generally lower on larger projects than on small projects to reflect economies of scale. Fees on projects involving alterations to existing buildings tend to be 1%–2% higher than normal. Fees may also be higher if the project is particularly complex.
56. Dealing with a listed building may incur additional fees because of the complexity involved in the approvals required, for example applying for planning consent and the extra time involved. A maximum overall figure of 15% can be used as a guide, but this may be lower for a large new build project, and higher for a small complex one. New building work or substantial refurbishments and adaptations should normally be undertaken by a suitably qualified building professional.



## **SURE START CHILDREN'S CENTRES**

57. The Sure Start, Early Years and Childcare Grant 2008-11 includes capital funding for the set up and maintenance of Sure Start Children's Centres.
58. Sure Start Children's Centres are key to achieving the ambition set out in the *Children's Plan: Building brighter futures*, and the *Children's Plan: One Year On* that every child and young person should have the opportunity to fulfil their potential. They are at the forefront of transforming the way services are delivered for young children and their families.
59. The Apprenticeships, Skills, Children and Learning Act 2009 amended the Childcare Act 2006 provides a statutory definition of Sure Start Children's Centres. It also establishes them as a legally recognised part of the universal infrastructure for children's services, for the benefit of young children and their families wherever they live. In particular, the Act places a duty on local authorities to make arrangements for sufficient provision of children's centres, to meet local needs as a long term statutory commitment.

### **Programme Delivery and Milestones**

60. The third and final phase of the national roll out of Sure Start Children's Centres is taking place from April 2008 to March 2010. Local authorities, working with their Children's Trust partners, are responsible for planning and delivering children's centres so that by 2010 there is universal access to children's centre services for all children under 5 and their families.
61. Whilst Phase 1 and 2 focused on the most disadvantaged areas, phase 3 centres will provide improved access to services for families living in less disadvantaged and more affluent areas. Services, provided in partnership with private, voluntary, independent and statutory agencies, will include outreach services for families at greatest risk of social exclusion; information and advice for mothers, fathers and carers on a range of subjects for young children; support for childminders via a co-ordinated network; activities for parents/carers and children at the centre; and links to Jobcentre Plus advice on training and employment opportunities for parents.
62. Sure Start Children's Centres play a vital role in the delivery of health services and working effectively with health services is an integral part of the core offer. In more advantaged areas there are likely to be fewer services on site and more signposting of other services. However, all children's centres will provide basic information and advice, and make contact with local parents to ensure that they know what is on offer, whether in the centre or elsewhere, so they know how to access the services they need.
63. We expect phase 3 centres to provide a range of services depending on local needs and existing services. Increasingly we would expect to see the delivery of the Healthy Child Programme (the core universal service that promotes the health and well-being of children) by health visitors, access to maternity services and other parenting support services delivered from children's centres.



### Co-location of services

64. Although the integration of services does not rely on co-location this is clearly a very effective way of delivery. Pressure on space and suitability of accommodation will mean that co-location is not always possible. Where co-location is not possible, it is important that there should be strong planning and organisational links between the children's centre and health services, to ensure that services feel integrated to the families using them. A key part of this will be planning how best data and information can be shared to maximise service effectiveness.
65. Together for Children (TfC) working together with local authorities and Primary Care Trusts have produced a suite of support products on improving health and LA joint working which is available via the TfC website [www.childrens-centre.org](http://www.childrens-centre.org).
66. Further guidance on planning and delivering phase 3 centres is set out in the Sure Start Children's Centre: Phase 3 planning and delivery guidance which provides additional information to supplement, not replace, earlier guidance in Sure Start Children's Centres Planning and Performance Management Guidance 2006 both documents can be found at [www.dcsf.gov.uk/everychildmatters/earlyyears/surestart/planningguidance/](http://www.dcsf.gov.uk/everychildmatters/earlyyears/surestart/planningguidance/)
67. The target date for designation of phase 3 centres is March 2010. In order to meet this date LAs have flexibility to prioritise their funding within the SSEYCG capital pot. As the 2009-10 Memorandum of Grant makes clear, there is flexibility within this pot to spend the funding allocated for Sure Start

Children's Centres Capital, Maintenance and Early Years Capital between the policy areas.

68. If local authorities anticipate that they will not be able to meet the March 2010 target for designating children's centres, they should discuss this with both the technical consultant and also with their Together for Children (TfC) adviser as soon as possible. It may be possible, in certain circumstances, for centres to be designated ahead of completion of capital projects, where services are in place and are not dependent on the completion of building work. LAs should seek further advice from TfC on specific cases.

### **Sure Start Early Years and Childcare Grant funding deadlines**

69. All SSEYCG funding must be spent by end of March 2011, regardless of the designation date for the children's centre. There is no provision for carrying forward unspent funds or retention cost beyond this date.

## **SUPPORTING CAPITAL PROGRAMME DELIVERY**

### **Delivery Partners**

70. There are a variety of support measures in place to help LAs with the planning and development of capital programmes. These measures, including targeted advice, can be employed at various stages for capital programmes and projects and are aimed at helping deliver your capital strategy on time, to budget and facilities that are fit for purpose.

### **Together for Children**

71. The Department's children's centre delivery partner, Together for Children (TfC), will continue to support local authorities to plan and deliver children's centres, and to develop designated centres to fully operational status. More information about TfC and contact details can be found at [www.children-centres.org](http://www.children-centres.org)

### **Professional architectural assessment and advice**

72. Atkins and NPS have been commissioned to provide technical design advice and support to local authorities. They will support local authorities in helping to ensure centres are delivered to programme and in some cases conduct fitness for purpose assessments. Further detail is provided in paragraphs 78 to 85 below under the heading Capital Approval Section.
73. Atkins and NPS will hold regular reviews of progress with local authorities, providing advice and support where necessary.

## **SURE START EARLY YEARS AND CHILDCARE GRANT CAPITAL MONITORING AND SURE START CHILDREN'S CENTRES**

74. LAs are required to enter capital project details and monitoring information on the EC Harris web portal system at



<http://onsurestart.portal.echarris.com/apps/secu/ui/Login.aspx?ReturnUrl=%2fDefault.aspx> for all projects funded by SSEYCG, and to keep data updated.

75. General assistance and advice on accessing and use of the Sure Start\_On database can be found by accessing the website provided in paragraph 74 above.
76. Local authorities have responsibility for ensuring that capital project monitoring information is submitted to the DCSF at the appropriate time and to an acceptable standard.
77. We are not obliged to approve or fund Sure Start Children's Centres capital projects where development to tender stage or beyond has occurred. The local authority is proceeding at its own financial risk where DCSF's approval is required and has not been sought and gained.

### **Capital approval process**

78. The technical consultants (NPS and Atkins) will continue to offer technical support and advice to local authorities to help ensure children's centres are fit for purpose, and delivered to time and within budget. They will also monitor expenditure across the full SSEYCG capital.
79. Sure Start Children's Centre building projects involving less than £500,000 of SSEYCG capital will now be self-approved by individual local authorities. In other words, the £150,000 upper limit for Phase 2 has been raised to £500,000.
80. Sure Start Children's Centre building projects involving £500,000 or more of SSEYCG capital will automatically be referred to the technical consultants and TfC when entered on the SureStart\_on database. LAs should include clear information about whether such projects include a childcare element.
81. TfC will consider the 'strategic fit' for all children's centre capital projects over £500,000 and the technical consultants will assess fitness for purpose.
82. Sure Start Children's Centre building projects involving costs of £1 million or more of SSEYCG capital will be assessed by the technical consultants and TfC as described above and will then be referred to the DCSF for approval.

### **Request for additional investment for approved capital projects**

83. Sure Start Children's Centre capital projects which initially included Sure Start Children's Centre capital and which have previously been approved, and where additional SSEYCG is now being requested, must be submitted for approval using the 'Cost Amendment' sections of SureStart\_on to the SSEYCG. Further information on completing these sections can be found under 'System Guidance' on SureStart\_on or downloaded here: [www.surestart.gov.uk/resources/general/capitalbuildingsfacilities](http://www.surestart.gov.uk/resources/general/capitalbuildingsfacilities)

84. For non-building capital spend, projects under £250,000 will be self-approved by each local authority. Expenditure of £250,000 or more of SSEYCG capital will require DCSF approval via the SureStart\_on system.



### **Recording capital spend on SureStart\_On**

85. All capital spend from the SSEYCG should be recorded on SureStart\_on. There is a range of ways in which spend can be recorded, depending on the scale and nature of a project.
86. New children's centres will need to be set up as such on SureStart\_on, identified as Phase 3 centres. Basic information on the centre will then be automatically copied across to TfC's Tracker database, ready for service information to be entered.
87. A new project which is part of an existing children's centre will need to be shown as a phase 3 project linked to that centre, even if the centre was delivered in a previous phase. SSEYCG may be used to enhance and extend Phase 1 and 2 centres, as well as to set up new Phase 3 centres.
88. In some cases, relatively small capital expenditure across a number of centres can be grouped as a single project and entered as such on the database. This could apply, for example, to the purchase of IT systems for several centres. Such projects must be linked on the database to an existing centre, rather than set up as a new centre, otherwise the project will automatically show as an additional children's centre on both SureStart\_on and the Tracker.

89. Non-children's centre capital spend from the SSEYCG should be recorded, as previously, on the 'SSEYC Grant – not children's centres' screen.

### **Sustainable Design**

90. The Department is committed to embedding sustainable development through children's services via the Sustainable Development Action Plan (SDAP) *Brighter Futures - Greener Lives*. The SDAP aims to establish sustainable development as an integral part of how policy on children and young people is developed and implemented.

### **Sustainable development**

91. Sustainable development means a better quality of life now and for generations to come. A widely used definition of 'sustainable development' is: 'development which meets the needs of the present without compromising the ability of future generations to meet their own needs'. It is also about being clear and responsible about the use of scientific, and other, evidence (for example, levels of pollution or carbon emissions). Further information can be found at: [www.defra.gov.uk/sustainable/government](http://www.defra.gov.uk/sustainable/government)
92. The Department for Children, Schools and Families has set challenging targets for sustainable buildings, which build on the wider government policies on low energy/carbon buildings and sustainable construction. The DCSF's Sustainable Development Action Plan reaffirms our commitment to monitoring performance against these standards. Sustainable development covers a very wide range of activities. In the UK, four key areas have been identified:
- Sustainable Consumption and Production
  - Climate Change and Energy
  - Natural Resource Protection and Environmental Enhancement
  - Sustainable Communities
93. Further guidance on environmental sustainability in children's centres will be available early in 2010

## EXAMPLES OF GOOD SUSTAINABLE DEVELOPMENT PRACTICE IN SURE START CHILDREN'S CENTRES

### Briercliffe's Children's Centre, North Yorkshire



94. Briercliffe's Children's Centre, North Yorkshire has range of sustainable design features including a sustainably-sourced timber frame, rain water harvesting and a grass roof. It boasts a fully fitted kitchen which enables families to learn about growing and cooking food. Runner Up Royal Institute of Chartered Surveyors (2007)

<http://www.northyorks.gov.uk/index.aspx?articleid=6782>

### Old Moat Sure Start Children's Centre



95. Old Moat Sure Start Children's Centre, Manchester - supports participants to reduce waste; eat healthily, reduce food mile, conserve energy and reduce carbon emissions. It has changed to plumbed-in filtered water instead of plastic bottle coolers. A 'turn off' policy is saving electricity. Mum Paula O'Reilly, says of Milly (3 years): "She's very good at reminding me to switch lights off at home. If children are aware of these things at an early age, it really gives us adults an extra push" Paula is a member of the centre's 'Yummy Mummies' group supported by the centre to grow fruit and vegetables. Winner Biodiversity Hot Spot Manchester Council

[http://www.manchester.gov.uk/site/scripts/documents\\_info.php?categoryID=200109&documentID=3197&pageNumber=12](http://www.manchester.gov.uk/site/scripts/documents_info.php?categoryID=200109&documentID=3197&pageNumber=12)

## The Sure Start Centre, Barrowcliff



96. The Sure Start Centre, Barrowcliff was welcomed as an opportunity for the LA to look into alternative materials and land use to reduce drain on resources. It features a rain water recycling unit to provide water for flushing the toilets, wind chimneys to provide ventilation for the building a grass roof that provides insulation from heat loss and heat gain and improves air quality. It is also great at soaking up the rain, preventing heavy rain running off the roof and therefore reducing the risk of flooding. The building also has a timber frame made from quick growing, sustainable wood. Commended by the Royal Institution of Chartered Surveyors (2005)  
<http://www.scarborough.gov.uk/default.aspx?page=11407>

## CHILDCARE QUALITY AND ACCESS GRANT

97. The Childcare Quality and Access Grant funding is part of the Sure Start, Early Years and Childcare and Aiming High for Disabled Children Grant. This allocation is in addition to the funding allocated for the Sure Start Children's Centres programme and is to enable local authorities to address issues and gaps identified in their sufficiency assessments. It has three broad aims, to:
- improve the quality of the learning environment in early years settings to support delivery of the Early Years Foundation Stage (EYFS), with a particular emphasis on improving play and physical activities and ICT resources
  - ensure all children, including disabled children, 0 to 14 (or 18 in the case of disabled children) are able to access provision
  - enable private, voluntary and independent (PVI) providers to deliver the extension to the free offer for 3 and 4 year olds and to do so flexibly.
98. Our expectation is that the majority of the grant is used to improve the quality of the environment in early years and childcare PVI settings, both to support higher quality experiences for young children, and to ensure that all children can access services and benefit fully from them.
99. However, spending on the maintained sector is not precluded, if it will address gaps in sufficiency. We have not set a percentage split between PVI and maintained settings and have not set a limit or prescribed amount for any single project.
100. Providing that spend is in line with any of the three aims of the Grant as set out above, it is for the local authorities to decide how best to deploy the grant for maximum impact and value for money. On that basis we leave it to local authorities to decide how to distribute it to providers, so they can meet the sufficiency needs of their area.
101. Grant can be used to fund 100% of the cost of work and equipment for those providers who have little or no resource of their own. For others with more resources, the Grant can be provided on a matched funding basis, with the provider making up the difference. Similarly, some providers may need an initial, small capital investment to enable them to attract capital funding from other sources like the Big Lottery Fund. This may be a sensible approach for work such as large-scale adaptations or refurbishments.
102. Project management costs can be capitalised as part of the overall cost of a tangible capital asset provided the total cost of the asset exceeds the capital threshold of £2,500.



## Quality

103. A high quality setting needs the right built environment and adequate and appropriate resources. This means providing enough space for larger group sizes which can also be used flexibly and up-to-date facilities and equipment to support children's learning and development.
104. The Grant will allow local authorities to invest strategically to ensure that the PVI sectors are able to deliver high quality learning and development for all children. Eligible expenditure includes:
  - equipment to ensure that practitioners can effectively observe and capture children's progress, including portable items such as digital cameras, scanners and video recorders, laptop and desktop PCs

- information and communication technology – laptop and desktop PCs, digital cameras, video and sound recorders, hi-fi equipment
  - provision of stimulating and accessible outdoor play space and equipment – this includes the purchase of land to be developed for this purpose<sup>1</sup>
  - development of adequate indoor space for age-appropriate play activities and suitable rest areas
  - replenishing and replacing toy stocks and purchasing other learning and development materials and resources to support the EYFS
  - resources to encourage a rich and stimulating language environment in line with letters and sounds – musical instruments, tape recorders, CDs as well as books, rhymes and signs
105. In order to give a coherent approach to quality improvement that embraces the workforce as well as the built environment, this capital funding should be spent in conjunction with the Outcomes, Quality and Inclusion element of the Sure Start, Early Years and Childcare Revenue Grant, which includes the Graduate Leader Fund.

## Access

106. The LAs' role in facilitating the childcare market in pursuit of the duty to secure sufficient childcare under the 2006 Childcare Act is supported both by revenue and capital funding from within the Sure Start, Early Years and Childcare Grant. LAs need to ensure that - so far as is reasonably practicable - all children of working parents or those looking to work are able to access provision.
107. authorities will need to use available funds in accordance with the findings of their childcare sufficiency assessments, or other needs that have emerged during subsequent sufficiency action planning, but the *Securing Sufficient Childcare* statutory guidance indicates that they may wish to do so by supporting providers through one-off capital payments, particularly in relation to groups or areas where there is unmet demand.
108. Every setting must have an inclusion policy setting out how it will meet the needs of all children, in line with delivery of the EYFS. However, ensuring full access, particularly for disabled children, and providing facilities and equipment for disabled children and children with SEN can often require adaptations. In addition, ensuring that settings are fully inclusive – that their facilities are flexible enough to meet the needs of all individual children – can also sometimes require capital investment. This Grant will allow local authorities to invest to provide key facilities wherever they are required, and work with as many PVI settings as possible to ensure that their built environment and facilities are welcoming and inclusive.

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<sup>1</sup> Further guidance on outdoor play, including the development of appropriate spaces can be found at <http://www.standards.dfes.gov.uk/eyfs/site/3/3.htm>



## Free Entitlement

109. The Government has put in significant investment to fulfil the commitment to extend the free nursery education entitlement by offering all 3 and 4 year-olds 15 hours a week for 38 weeks of the year from September 2010, delivered more flexibly. A longer and more flexible offer will give parents greater choice in balancing work and family life as well as helping children get a better start.
110. Feedback from the pathfinder local authorities who have been implementing this offer suggests that the move to flexibility is challenging for some smaller PVI providers which, for example, often lack the facilities to provide lunch or breakfast. The availability and appropriateness of outside play space and equipment and of inside space for rest are also concerns for some providers moving to a more flexible model.
111. We expect most of the Quality and Access Grant capital funding will be used to strengthen PVI providers. This Grant will allow LAs to invest in the necessary facilities in PVI settings to enable them to deliver the extended free offer, and will complement the £590 million revenue funding already allocated for 2008-11 to support the additional 2.5 hours and more flexible access.



Photograph supplied by NCMA

## **Quality and Access Capital Grant Approval Process**

112. All building projects relating to the Quality and Access project should be entered by local authorities on the SureStart\_on database on the non-Sure Start Children's Centre screen. Local authorities can self-approve all Quality and Access capital projects costing less than £500,000.
113. Quality and Access building projects involving £500,000 or more of SSEYCG capital will automatically be referred to the technical consultants and TfC when entered on the SureStart\_on database. Local authorities should provide clear information about the project.
114. Where appropriate, the technical consultants (NPS and Atkins) will continue to offer technical support and advice to local authorities and ensure their project is fit for purpose, and delivered to time and within budget. TfC will also consider the 'strategic fit' for all children's centre capital projects over £500,000 and the technical consultants will assess fitness for purpose.
115. Quality and Access building projects involving costs of £1 million or more of SSEYCG capital will be assessed by the technical consultants and TfC as described above and will then be referred to the DCSF for approval.
116. For non-building capital spend, projects under £250,000 will be self-approved by the LA. Spend of £250,000 or more of SSEYCG capital will require DCSF approval via the SureStart\_on system.
117. All capital spend from the SSEYCG should be recorded on SureStart\_on. There is a range of ways in which spend can be recorded, depending on the scale and nature of a project. Where necessary, Quality and Access projects can be grouped together.

## **Providing Capital Funding to providers in the private, voluntary and independent sector**

118. We expect the bulk of the quality and access funding to be spent in the private, voluntary and independent (PVI) sector. We recognise, of course, that this gives local authorities less direct control than if they were funding directly delivered services over exactly how funding is used, over the long term use of any assets and the long term viability of any organisation to whom a capital grant is made.
119. This means, particular attention needs to be paid to conditions of grant and to any clawback arrangements (see paragraphs 39 to 41). The Department's intention is, of course, that capital funding should be used, in the long term, to support the objectives of the grant – in this case to support improvements in access to and the quality of provision in settings and to help the extension of the free early education entitlement.
120. As with all funding through this grant, that means that payments should be linked directly to needs identified through sufficiency assessments, through quality improvement mechanisms or through work on introducing the extended free early education entitlement. Clawback arrangements should

reflect the need to keep the assets funded through this grant in use for the purposes intended, throughout their economic useful life. In some circumstances, that may, of course, mean facilitating the transfer of an asset from one provider to another, or being clear about clawback arrangements if providers seek to divert assets to uses outside the purposes of the grant.

121. The conditions of grant and clawback arrangements between providers and LAs are, of course a matter for each LA, but DCSF should be informed in cases where an LA decides to invoke or waive clawback. In deciding whether to invoke or waive clawback from LAs, DCSF will take into account efforts and arrangements made to secure the asset for the purpose intended when the grant was first paid and how the asset can best be kept in use for the purposes intended in the Grant for the whole of its economic useful life.



Photograph supplied by NCMA

### **Providing capital funding to childminders**

122. For decisions on capital grant to childminders we are mindful that it is often challenging for LAs to determine whether they should provide capital funding, particularly when that funding is for improvements to the childminder's premises, which is also likely to be their home.
123. We appreciate there are risks involved with allocating capital funding:
- LAs would need to set clawback conditions over a residential dwelling and if clawback needed to be applied this may cause great hardship to the individual and bad publicity to the LA.
  - DCSF has a policy (as set out in Managing Public Money) to clawback funds when an asset is disposed of or its use is changed and any waivers or write-offs have to be reported in the annual accounts. Therefore although an LA could waive the clawback the LA may still have to pay the money back to DCSF.
  - It is difficult for a LA to take a charge on an asset which is someone's home. DCSF guidance is that LAs should include assets funded by grant on their own asset register or should have a clear audit trail to the asset funded with grant money, but that may be difficult when the business is also someone's home.

- It will be difficult to assess what the funding has actually been used for e.g. the LA provides funding for improvements to the play area, but the childminder interprets that as a need for a conservatory (which may be valid, but equally may not be)
124. We are clear that the Early Years Childcare Quality and Access Capital Grant funding should be used in support of the aims of the Grant, as set out in the MoG and providing it is, then it is for LAs to decide how to distribute the Grant to providers, including childminders.
  125. LAs need to spend the grant in line with the priorities arising from their sufficiency assessment, which will have highlighted the gaps between supply and demand with emphasis on support to the PVI sector – which includes childminders.
  126. The Department intends LAs to provide capital funding to childminders and therefore we have set out some guidance below to enable LAs to do so whilst minimising the risks.

### **Guidance on providing capital funding to childminders**

127. The LA should consider setting out clear guidance on their criteria for funding and their criteria for providing it – providing specific examples.
128. Evaluate the need for the asset being requested i.e. is a conservatory necessary for childminding – what benefits does it add?
129. Have a contract with the childminder setting out what funding will be provided and what it should be used for (include any quality standards etc and any exclusions for use of the funding).
130. Set out what information the LA requires about how the Grant is used if any i.e. do they want receipts for funding or a report about how the funding has been used.
131. Set out clearly the terms for any clawback, for example, the LA may set out a timescale for reduced clawback over time. This should set out the assumptions made about the economic useful life of the asset and clearly detail under what circumstances clawback would apply - for example, the LA might consider that a kitchen refurbishment would have an economic useful life of 5 years and therefore if a childminder stopped being a childminder within 1 year they would need to pay back the whole of the Grant, if they stopped being a childminder after 1 year they would have to pay back 4/5 (80%) of the Grant, after 2 years 3/5 (60%) and so on. There should also be a clause that sets out if there are any circumstances where clawback would be waived.
132. Local authorities should inform DCSF in cases where they invoke or waive clawback from childminders. DCSF will then consider the circumstances including other information provided and decide on a case by case basis whether clawback from local authorities should be applied. DCSF would not

look to recover funding from LAs where they have good reasons to waive clawback from childminders or other PVI providers.



## **AIMING HIGH FOR DISABLED CHILDREN (CAPITAL)**

### **Key points from the short breaks implementation guidance**

133. The Government is providing local authorities with £90 million in capital funding for short breaks over the 2008-11 period. This capital expenditure should be used to help achieve the wider vision for short break transformation and should support the delivery of the Full Service Offer as set out in the short break programme implementation guidance.  
<http://www.everychildmatters.gov.uk/resources-and-practice/IG00319>
134. The Aiming High for Disabled Children (AHDC) capital allocation is only available to support short breaks provision and should not be used in support of wider SSEYC capital projects, funding for which is provided through the Main Capital block of the grant. The distinction between the SSEYCG and AHDC allocations are made clear in the Memorandum of Grant.
135. The AHDC capital should be used for equipment, building adaptations and new facilities that will support disabled children's short breaks. The AHDC capital funding should not substitute for funding that would otherwise have been used to meet the requirements of disability legislation. It is essential that transport for short breaks is seen as a shared responsibility, as one service or organisation cannot adequately meet the requirements of disabled children for flexible and accessible transport on their own.
136. The document "Short Breaks Capital Programme: Planning and Practice" addresses a range of options to consider to support the capital planning process, including strategic planning, partnerships, project management and tendering and procurement. It also provides examples of innovative uses of the Short Breaks capital funding. This information can be accessed on <http://www.togetherfdc.org/Topics/Capital.aspx>
137. LAs should be aware that major new building projects can frequently run to timescales exceeding the 2 year period available for capital expenditure. These projects should be avoided, or arrangements made by which AHDC capital funding is utilised by April 2011 within the overall project.

### **Key actions for Local Authorities and Primary Care Trusts**

138. All capital expenditure should form a joint consideration between the local authorities and partner Primary Care Trusts (PCTs). Local authorities were advised to begin capital planning early in 2008-09, regardless of whether they are in pathfinder or non-pathfinder areas. Therefore it is essential to commence planning immediately if this has not already taken place.



## FREQUENTLY ASKED QUESTIONS AND ANSWERS

### General Capital Guidance

**Q1.** What is the economic useful life of an asset? Are all assets deemed to have a 25 year life?

**A1.** The economic useful life of an asset is the period of time that an asset is expected to be useable with normal maintenance and repairs for the purpose it was acquired. This period of time will vary depending on the asset that is being considered. For example, the economic useful life of computer equipment will be considerably less than that of a building. Each local authority will have its own policies regarding the economic useful life of types of asset, usually for depreciation purposes and should apply those when setting the economic useful life of assets funded by grant.

**Q2.** Who should decide on the depreciation arrangement to be applied to assets funded by SSEYCG?

**A2.** Local authorities should apply their own depreciation policies as applied to similar capital assets maintained on their assets register.

**Q3.** We have heard a lot about the current Comprehensive Spending Review period (2008-2011) but when is the next spending review period and when will we know if we have continued funding?

**A3.** The next CSR period will commence in April 2011. However, Treasury is yet to notify us of its intentions or arrangements for the next CSR period and we cannot therefore provide any certainty about funding.

**Q4.** Can we guarantee the position on no carry forward will not change?

**A4.** Our current position is that we have been informed by Treasury that there will be no carry forward beyond March 2011. We cannot guarantee this position will not change because it is up to Treasury to decide how funds will be allocated to Government departments and they will agree any conditions to be attached to the funding provided.

**Q5.** What happens after March 2011 if a local authority has not been able to spend its allocation during the spending review particularly if a project has been started and not yet completed?

**A5.** Any SSEYCG grant not spent within the current spending review period, that is by March 2011 will be lost and will be returned to Treasury. The Department is unable to guarantee that funds will be available to finish projects not yet completed. Local authorities must ensure all projects are completed within the current spending review period, by March 2011.

**Q6.** Primary Capital guidance refers to joining up funding streams on delivery. How will this impact on SSEYCG?



**A6.** Funding provided for primary capital programme has its own objectives and is managed under guidelines set out separately from the SSEYCG. The conditions for SSEYCG have been agreed by the Treasury and we are unable to change these rules.

**Q7.** What is the minimum length of lease that should be granted to a provider?

**A7.** The length of lease applied to each asset will vary depending on the economic useful life of the asset but the minimum lease period should be longer than 12 months. Local authorities should ensure the lease includes a clause setting out what will happen in the case of early termination of the lease.

### **Sure Start Children's Centres**

**Q8.** Do local authorities have to put in a claim for retention fees by end of March 2011 or is there provision to make a claim after March 2011 when there will be more clarity on the amounts due from contractors?

**A8.** Retention fees should be claimed as soon as they are accrued, irrespective of when they are paid out. There will be no funds available beyond March 2011 for payment of retentions.

**Q9.** What is the process regarding spending SSEYCG capital allocation in a situation where a planned children's centre is part of a larger regeneration programme that will be completed after March 2011?

**A9.** Local authorities should already be in touch with TfC about any projects that fall into these categories, to discuss how they will deliver universal coverage of children centre services by the designation deadline of March 2010.

**Q10.** What happens if the children's centre is part of a bigger regeneration programme still in the planning phase, can the grant allocation be deferred or reserved to allow the programme to be delivered?

**A10.** There can be no carry forward of capital funding beyond March 2011. In the event of the regeneration programme receiving additional financial input from other sources with a longer spend deadline or in exceptional cases where a LA has agreed later delivery of a children's centre project with TfC, the SSEYCG must be spent by March 2011, in other words all SSEYCG investment must be spent by March 2011.

**Q11.** Revenue and capital expenditure will be required to run and maintain children's centres posts March 2011. How will these costs be met? Is there provision to make allocations to local authorities in the next CSR period?

**A11.** Funding for children's centres forms part of this Department's baseline, and the future of this will be considered as part of the same process as for other children's services. We are not yet in a position to provide any indication of funding allocations from April 2011. The Apprenticeships, Skills, Children and Learning Act 2009 amended the Childcare Act 2006 so that it provides a statutory definition of children's centres, and places a duty on local authorities to arrange sufficient children's centres to meet local need, so far as is reasonably practicable.

**Q12.** What is the process if we want to request bringing forward our allocation from 2010-11 into this year?

**A12.** Local authorities can put forward a request to draw down their capital allocation from 2010-11 into the current year. Each request for early draw down will be reviewed on a case by case basis. However, we will have to ensure the current year's capital allocation including all capital carry forward from previous years are either spent or committed before we are able to agree to requests for additional funding from earlier years.

### **Childcare Quality and Access Grant**

**Q13.** Are we expected to split capital funding proportionately between the PVI and maintained provision within the local authorities' area?

**A13.** No, we would not expect LAs to split funding proportionally according to the number of PVI and maintained sector settings in their area.

**Q14.** Can LAs build on school property to house a PVI setting?

**A14.** LAs can build on school property to house a PVI setting as long as that meets or addresses the gaps and needs identified in the Childcare Sufficiency Assessment or sufficiency action planning. However LAs must be aware that there are certain conditions that have to be met when building on school property. This is set out in Frances Carter's letter of 27<sup>th</sup> July 2009 which is appended to this guidance as Annex A.

**Q15.** Can the grant be used to re-build a pre-school knocked down because the previous building was a temporary accommodation?

**A15.** Yes, if it meets or addresses the gaps and needs identified in the Childcare Sufficiency Assessment or sufficiency action planning

**Q16.** As well as building new premises, can the Grant be used to refurbish a pre-school on school premises?

**A16.** Yes, if it meets or addresses the gaps and needs identified in the Childcare Sufficiency Assessment or sufficiency action planning.

**Q17.** What are the implications for a local authority if it has used the grant to develop a nursery provision in a school, or already commenced a building project at a school?

**A17.** If you have, you will need to ensure that you have met the terms of the guidance that sets out local authorities' obligations when they wish to support building on school sites through the use of Childcare Quality and Access Capital Grant funding. This is set out in Frances Carter's letter of 27<sup>th</sup> July 2009 which is appended to this guidance as Annex A

**Q18.** If property is built on school premises or other LA grounds and it is no longer used for the purposes set out in the Childcare Quality and Access grant, but is retained for other activities, will the DCSF invoke clawback from the LA?

**A18.** Yes. The local authority must inform the Department as set out in paragraphs 39 to 44 on clawback.

**Q19.** How were the allocations decided?

**A19.** The funding was allocated based on numbers of under-fives and the number of PVI settings, weighted to take account of regional pricing differentials for construction and levels of deprivation. The allocations include an element for irrecoverable VAT.

**Q20.** Is the “access” money intended only for provision for disabled children?

**A20.** No. Although it may be particularly useful for local authorities to apply some of this money to the needs of disabled children, it is by no means limited to disabled children. However in the context of Short Breaks for families with disabled children, there is provision in the Aiming High for Disabled Children capital grant to provide access for disabled children. More information on this can be found on the website. A link has been provided <http://www.everychildmatters.gov.uk/resources-and-practice/IG00319>.

**Q21.** Can we use Grant funding to respond to new developments in our local childcare market that post date our Sufficiency Assessment?

**A21.** Yes, the Grant can fund gaps in sufficiency and local needs that may not have been specifically identified in your Assessment, but may have emerged during subsequent sufficiency action planning.

**Q22.** Can the grant be used to fund the cost of engaging a consultant or project manager to deliver the Sure Start agenda, particularly liaison with childminders to provide expert advice and ensure effective delivery of the objectives set out?

**A22.** Project management costs can be capitalised as part of the overall cost of a tangible capital asset provided the total cost of the asset exceeds the capital threshold of £2,500. However, the cost of delivering training, even if it is specialised training is revenue expenditure and cannot be classified as capital.

**Q23.** Is there any flexibility to allow unspent Childcare Quality and Access Grant to be carried forward into subsequent years?

**A23.** LAs are permitted to spend flexibly within the main capital funding block which includes the Childcare Quality and Access Grant. Any unspent Childcare Quality and Access funding can be carried forward into future years as part of unspent capital. However, there is no agreement to carry forward capital underspends beyond 2010-11. The last year carry forward is applicable in the current CSR period is 2009-10 into 2010-11.

**Q24.** Can training provided by childminders be deemed to be capital?

**A24.** The cost of delivering training cannot be classified as capital expenditure. It does not create a tangible asset and is therefore classified as revenue expenditure.

**Q25.** Are there any plans to provide the Sure Start Early Years Quality and Access funding in a similar way to the Standards Funds?

**A25.** The SSEYCG is currently ring-fenced and the payment arrangements are approved by the Treasury. At this stage there are no plans to provide this funding in a similar way to the Standards fund.



### **Aiming High for Disabled Children - Short breaks capital funding**

**Q26.** What is the money for?

**A26.** The money is to help LAs and their Primary Care Trust partners create access to short break provision through providing new equipment, adaptations and facilities. Local partners will need to consider how to use the new capital funding within their wider

strategic planning for short break services, and in combination with other capital funding sources - including those relating to play and youth facilities set out in the Children's Plan.

**Q27.** What changes will disabled children and their families see as a result of this capital funding?

**A27.** A range of things. We anticipate adaptations to carers' homes to enable them to provide breaks for severely disabled children to feature heavily within local

partners planning. Adaptations to venues such as children's centres, youth clubs and leisure centres are also expected, for example through adding equipment such as paediatric hoists which enable children to fully engage in a range of activities.

We also expect some of the money to be spent on accessible vehicles to transport children to break venues and small building programmes where extra short break facilities will be added to existing venues. These should be developed as an integral part of short breaks strategy and compliment current provision.

In areas with larger capital allocations, local partners may also wish to create substantial building projects - for example establishing adapted property that foster-carers could use to provide overnight breaks.

**Q28.** How will the capital money be allocated?

**A28.** The funding will be allocated to LAs although its use should be subject to joint-consideration with their Primary Care Trust partners. The Department will set out further information on how LAs can access the funding in the New Year.

**Q29.** When will it be available?

**A29.** Some capital funding will be available from April 2008, although expenditure will rise over the 2008-11 period.

**Q30.** What support will there be to enable local partners to make good use of the money?

**A30.** We are exploring how best to put in place national support arrangements for local partners in delivering the transformation of short break services. Local authorities will not require support in providing many of the expected adaptations and in making equipment available, but for larger build projects we will consider how best to help local partners manage their projects and gain excellent resulting facilities.

**Q31.** Aren't local authorities supposed to have accessible premises already?

**A30.** Disability legislation requires local authorities to make reasonable adjustments to secure access for the disabled. The money should be used to secure changes over and above such adjustments.

## CHILDCARE QUALITY AND ACCESS CAPITAL GRANT LETTER



Sanctuary Buildings  
Great Smith Street  
Westminster  
London, SW1P 3BT

To: Local Authority Finance Contacts  
Local Authority Early Years Policy Leads

27 July 2009

Dear Colleague,

### **Sure Start Early Years and Childcare Grant & Aiming High for Disabled Children (AHDC) - Childcare Quality and Access Capital Grant**

During the road shows held recently covering the Sure Start, Early Years and Childcare grant (SSEYCG) and the Aiming High for Disabled Children (AHDC) grant, the question of whether or not the Childcare Quality and Access Capital Grant could be used for building on school premises was raised. As promised at those events I am now writing to clarify the Department's position.

Sheila Scales' letter of 30 November 2007 sets out the Department's position in respect of the Childcare Quality and Access Capital Grant. This letter makes it clear that we expect the majority of the grant to be used to improve the quality of the environment in private, voluntary and independent (PVI) early years and childcare settings both to support higher quality experiences for young children and to ensure that all children can access services and benefit fully from them. This however, does not preclude funding to the maintained sector. This message was also reiterated in the 2009-10 Memorandum of Grant issued to Local Authorities (LAs) in February 2009.

Our position on the grant remains:

- The majority of the funding should go to the PVI sectors.
- In deciding how to allocate the funding, LAs must ensure that the funding is used to meet the gaps and needs identified in their Sufficiency Assessment.
- In deciding where to focus the grant, LAs must ensure they have considered the impact on existing PVI provision when considering the needs in their area.

Once LAs have considered all of the issues above, if their assessment leads them to determine that building on a school site is the best option then they may do so providing that certain criteria are met.

LAs may provide space on a school site for use by either maintained or PVI settings but the regulations state that additional facilities should be provided wherever

possible within existing buildings. As a last resort building for extended services (which includes the provision of childcare) can take place on surplus school playing fields.

The definition of school playing fields is broad and the guidance defines it as “land in the open air which is provided for the purposes of physical education or recreation”.

LAs should ensure that where they build on school property to house PVI settings they ensure that their interests are protected and that the premises are used for the purposes intended. We recommend that LAs issue a lease (or a binding contract) concerning the PVI use of the property. This is allowed under Section 27 (2) of the Education Act 2002.

The lease of school playing field land to the childcare provider will require consent under section 77 of the School Standards and Framework Act 1998. However, such a lease should be covered by a general consent as long as certain criteria are met. The full criteria are set out in Annex F of the guidance for the Protection of School Playing Fields and Land for Academies July 2007, but the main criteria are that:

- the land is clearly surplus to the schools statutory requirements under the relevant regulations; and
- the proposal has the support of the school (Head Teacher and Governing Body) where the new facilities are to be provided.

The LA is required to notify the Department in a situation where it decides to grant a general consent under Section 77. This information is listed in Annex F of the guidance on The Protection of School Playing Fields and Land for Academies.

The Department’s Guidance: *The Protection of School Playing Fields and Land for Academies July 2007* can be found at <http://www.teachernet.gov.uk/docbank/index.cfm?id=11600>.

As you are aware, we are currently updating the Sure Start, Early Years and Childcare Capital Guidance and together with this note we will provide a section in the guidance that offers advice and examples of best practice when providing such a lease or binding contract. We will also provide guidance on the clawback issues if the premises are no longer used by the PVI provider.

We hope that this provides some clarity on the issue and enables LAs to continue with their plans for delivering the Childcare Quality and Access capital grant.

There is a lot of guidance and regulations concerning schools premises and all LAs should have people or teams with expertise in this area who can offer advice. Where LAs have any doubts regarding their plans for building on a school site, they should consult the Department, preferably via email to either the capital email box at [capital.surestart@dcsf.gov.uk](mailto:capital.surestart@dcsf.gov.uk) or directly to Alison Wright in the Schools Asset Team at [Alison.Wright@dcsf.gov.uk](mailto:Alison.Wright@dcsf.gov.uk).

Alternatively you can contact the relevant contact for the policy area or grants payment as set out in the Memorandum of Grant (2009-10) at Annex G.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Frances Carter". The signature is written in a cursive style with a large initial 'F' and 'C'.

Frances Carter  
Head of Finance Unit  
Early Years and Extended Schools Group



**EXAMPLE OF CAPITAL GRANT AGREEMENT, WILTSHIRE COUNTY COUNCIL**

**DATED \_\_\_\_\_ 2009**

**WILTSHIRE COUNCIL**

**and**

**xxx**

**SURE START, EARLY YEARS and CHILDCARE  
CAPITAL GRANT AGREEMENT**

**THIS AGREEMENT** is made the                      day of                      2009

**BETWEEN:**

- (1) **WILTSHIRE COUNCIL** of County Hall Trowbridge Wiltshire BA14 8JB (the "**COUNCIL**"); and
- (2) **xxx** (the "**Provider**")

**BACKGROUND**

The Council has been successful in securing a Sure Start, Early Years and Childcare Grant ("**SSEYCG**") for 2009/2010 from the Department for Children, Schools and Families ("**DCSF**") in order to support the delivery of the Government's ten year strategy for childcare services entitled *Choice for Parents: the best start for children* and the objectives and activities set out in the 2008-2011 allocation letter dated November 2007 together with any subsequent guidance or communications issued by the Sure Start, Extended Schools and Childcare Group or DCSF.

The aims and objectives of the Council for the Project are summarised at Schedule 2.

The Council shall be responsible for overseeing the development and delivery of SSEYCG in accordance with all applicable guidance and legislation and shall be accountable to the DCSF for the receipt and use of SSEYCG funds.

The Provider wishes to provide facilities to support the delivery of its services to families living in Wiltshire.

Where the parties to this Agreement have entered into a separate agreement for revenue funding in respect of SSEYCG the agreements are to operate separately and independently from one another.

**NOW IT IS AGREED AS FOLLOWS:**

1. **Definitions:**

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

"Asset Liability Period" means the periods set out in Schedule 4 of this Agreement.

"Agreement" means this agreement and the Schedules to it;

"Authorised Officer" means the person appointed and authorised by the Council for the purposes of this Agreement whose details are set out in Schedule 3 or such other authorised officer of the Council who shall be nominated in writing from time to time by the Council to the Provider;

"BREEAM" means the Building Research Establishment Environment Assessment Method;

"Centre" means the building(s) specified in the Proposal Form;

"Commencement Date" means the date of this Agreement;

"Event of Default" means the following situations:

Misuse of Grant – where the Grant is used for costs not properly incurred in connection with and/ or in accordance with the Project.

Successful Completion is unlikely to occur – either Successful Completion has not occurred or the Council reasonably judges that Successful Completion is unlikely.

Fraud and Negligence – if at any time the Provider or any of its employees, servants or agents acts fraudulently and/or negligently in relation to SSEYCG.

Material misrepresentation and changing information – if at any time any representation, release of information or statement made by the Provider regarding the Project is untrue or inaccurate (whether deliberately or not) in any material respect when made, or has changed in a manner that has a materially adverse effect on the Project and the Provider fails to inform the Council of such change within 3 months.

Actions of the Provider – if the Council becomes aware of any actions by the Provider or its employees, servants or agents that may have a detrimental effect on the Project, or which may bring the reputation of the Council into disrepute.

Changes to the Provider – if any of the following occur that the Council consider to be detrimental to the Project without first notifying the Council and obtaining its written approval in advance:

the Provider transfers Grant Assets to a third party;

the Provider merges or amalgamates with any other body;

the Provider changes its constitution as regards its purposes, payment to members and members of its governing body, distribution of assets (whether on dissolution or not) or admissions of members (where it has a membership).

"Grant" means the agreed financial capital support for the Project from the Council totalling xxx (£xxx);

"Grant Asset" means any land, buildings, equipment, vehicles or any other assets owned or leased by the Provider and purchased in whole or in part by Grant monies or which have been or shall be improved or repaired by the use of Grant monies;

"Grant Asset Register" means the register of all Grant Assets with a market value greater than £100 in the form set out at Schedule 5;

"Project" means the building project for general childcare premises as set out in the Proposal Form;

"Project Commencement Date" means the date on which the Provider opens the Centre to the general public;

"Proposal Form" means the proposal submitted by the Provider to the Council and agreed by the Council as set out at Schedule 1;

"Provider's Representative" means the person appointed and authorised by the Provider to represent the Provider for the purposes of this Agreement and whose details are set out in Schedule 3 or, subject to Clause 5.2.2, such person other who shall be nominated in writing from time to time by the Provider to the Council.

"Successful Completion" means completion of the Project in accordance with the Proposal Form;

"Surveyor" means the suitably qualified building professional identified in the Proposal Form.

- 1.2. The headings used in this Agreement are for reference purposes only and shall not be construed as part of this Agreement or deemed to indicate the meaning of the relevant clauses to which they relate.
- 1.3. Words importing the gender shall include other genders and words importing the singular shall include the plural.
- 1.4. References to a body or person shall not be restricted to natural persons and shall include a company, corporation or organisation.
- 1.5. References to Schedules are references to the Schedules to this Agreement and a reference to a paragraph is a reference to the paragraph in the Schedule containing such reference.
- 1.6. References herein to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
2. **Grant**
  - 2.1. The Council agrees to pay the Grant to the Provider on the condition that the Provider secures any other funding listed in its Proposal Form. The Provider agrees to accept the Grant on the terms and conditions of this Agreement.
  - 2.2. Subject to Clause 2.3, the Council shall pay the Grant within 30 days of receipt of a valid invoice from the Provider. The Grant is inclusive of VAT and no further payment of VAT shall be made by the Council to the Provider.

2.3. Where the Project comprises work to land or buildings and the Grant or part thereof is intended to meet any payment or stage payment for such work then each instalment payment of Grant shall be made either:

2.3.1. on submission of certified invoices to the satisfaction of the Council and, on Successful Completion, presentation of a valid completion certificate issued by the Surveyor; or

2.3.2. as a pre-agreed staged payment to meet the contractor's build programme, in which case the Provider shall be responsible for ensuring appropriate certification of each stage.

A payment by the Council of Grant monies under this Clause 2.3 shall be made within 30 days of receipt of the evidence or certification required under Clause 2.3.1 or 2.3.2 as the case may be.

2.4. Payment of Grant monies may be withheld by the Council if the Provider fails to submit any return required by the Council.

2.5. The Provider shall immediately notify the Council if it is anticipated that it shall cease or does cease to undertake or continue or complete the Project or any part thereof or if it appears that the projected costs of the Project have increased or are likely to increase by more than 5% of the overall figures projected within the Proposal Form.

2.6. The Council shall have the right to cease payments of Grant monies in the event that the Provider fails to use the full Grant amount within the Council's relevant financial year in which the Grant is approved by the Council.

### 3. **Use of the Grant**

3.1. The Provider shall ensure that the Grant is used only in accordance with this Agreement and that the Project is implemented in accordance with the Proposal Form.

3.2. All major new-build and refurbishment projects valued at over £500,000 for primary State schools and £2 million for secondary State schools, and which involve rebuilding or complete refurbishment of more than 10% of the floor area, shall be subject to a BREEAM assessment. If the Project is subject to such assessment, the Provider shall ensure that it achieves at least a very good rating using the BREEAM schools methodology. Smaller projects may

also be suitable for formal BREEAM assessment and the Provider shall, as far as practicable, apply the same standards to all such projects.

- 3.3. The Provider shall ensure that on the Project Commencement Date, the Centre is registered and remains registered with OfSTED.

#### 4. **Term**

This Agreement shall commence on the Commencement Date and shall continue in full force and effect until the end of the Asset Liability Period or until the earlier termination of this Agreement in accordance with Clause 14.

#### 5. **Authorised Representatives**

##### **The Authorised Officer**

The function of the Authorised Officer shall be to liaise with and give instructions to the Provider and its officers, employees, agents or sub-contractors in relation to all matters concerning the performance of the Provider of its obligations under this Agreement and to determine any matters or issue any notices as may be the function of the Authorised Officer under this Agreement.

##### 5.1. **The Provider's Representative**

The Provider's Representative shall have authority on behalf of the Provider in connection with any matter relating to the performance of this Agreement to exercise the rights, functions and obligations of the Provider under this Agreement.

To the extent it is reasonably possible the Provider shall not change the identity of the Provider's Representative without first discussing the matter with the Council and having due regard to the views of the Council in relation to any proposed replacement.

#### 6. **Monitoring Performance**

The Provider shall keep full, proper and up to date accounts and records that show how the Grant has been spent. These records must be copied to the Council on request and on Successful Completion, and shall be made

available to the Council and the National Audit Office or their representatives for inspection and copying at all other reasonable times.

The Provider shall co-operate and provide assistance to the Council in relation to all requisite monitoring of the Project. If the Council calls upon the Provider to provide any information that the Council shall reasonably require to satisfy itself that the Provider is complying with its obligations in relation to the Project, the Provider shall comply with that request at its own expense.

The Provider shall comply with any reasonable requirements that the Council may have for site visits, site audits, compliance visits and/or meetings with Council officers or its agents at any time.

The Provider shall permit the Council and the National Audit Office (including in each case their officers, representatives or nominees) access to its records and to any of its offices or buildings during the period of this Agreement, and for any period thereafter reasonably necessary to enable all monitoring and audit functions to be completed.

## **7. Information**

- 7.1. The Provider shall maintain a Grant Asset Register during the Asset Liability Period and shall supply the Council with a copy of such Grant Asset Register annually or on request or when new Grant Assets are acquired or disposed of.
- 7.2. The Provider shall take such steps as may be reasonable and practicable to afford the Council access to information which is reasonably required by the Council in connection with any of its statutory duties and responsibilities and for any purposes connected with its rights and obligations under this Agreement.
- 7.3. The Provider must notify the Council if:
  - 7.3.1. there is a change in the control of the majority of the shares in, or the voting rights amongst, its shareholders or members of its organisation;
  - 7.3.2. it merges or amalgamates with another organisation;
  - 7.3.3. it transfers any of its business to another organisation;
  - 7.3.4. a regulatory body directs an inquiry into or makes an order of any kind in relation to its affairs; or



- 7.3.5. any registration which it must maintain is withdrawn or cancelled or is threatened to be withdrawn or cancelled.
- 7.4. The Provider shall in all respects co-operate with the Council's reasonable requests so as to assist in enabling the Council to comply with all legislation relating to access of information, the Freedom of Information Act 2000 (the "Act") and any legislation or guidance issued under or in relation to the Act. The Provider shall not disclose to any person any information relating to its obligations under this Agreement which is exempt from disclosure without the prior written agreement of the Council.
- 7.5. Unless otherwise agreed by the Council, in procuring any Grant Assets or any works, services or materials in relation to the Project the Provider shall comply with the Council's standing orders or regulations relating to contracts and shall supply to the Council such information as the Council shall reasonably request in relation to any such procurement. In addition, the Provider shall take all reasonable steps to ensure that it achieves value for money in connection with the Project.

8. **Accountability**

- 8.1. The provisions of this Clause 8 and of Clause 6 apply without prejudice to each other.
- 8.2. The Provider shall maintain a sound system of internal financial controls and keep up to date accounting records in respect of the Grant recording actual expenditure by the Provider to date and shall make available to the Council independently audited accounts each year for seven years after the Project Commencement Date.
- 8.3. On request by the Council, the Provider shall make its accounting and financial records available for inspection by the Council's District and National Audit Officers and the DCSF.
- 8.4. The Provider agrees to account for the Grant separately from any other funding that it may receive.
- 8.5. In order to fulfil its duty to protect public funds, the Council may use information it holds pursuant to this Agreement to prevent and detect fraud. The Council may also share such information, for the same purpose, with

other organisations that handle public funds.

8.6. The Council and the Provider acknowledge that the Council is accountable to the Secretary of State for the disbursement of monies under this Agreement and SSEYCG and accordingly:

8.6.1. the Provider shall comply in every respect with any terms or conditions stipulated by the Secretary of State from time to time;

8.6.2. such conditions shall be incorporated into this Agreement so far as may reasonably be possible as though they were additional conditions governing the provision of the Grant to the Provider and the legal relationship between the Provider and the Council;

8.6.3. the Council shall not be under any obligation to pay Grant monies to the Provider if no funding has been provided for SSEYCG;

8.6.4. if the Council suspends, stops or withholds the Grant for any reason it shall notify the Provider and the Provider shall work with the Council (and do all that may be necessary or within its power to progress such) to remove or rectify or mitigate the circumstance, occurrence or act or omission which shall have caused the suspension or withholding of the Grant with the intent that the same shall if practicable or permissible be reversed; and

8.6.5. the Provider shall assist the Council in any way that may be necessary to enable the Council to comply with its obligations to the Government or to respond to any requirements of the Government.

## 9. **Annual Accounts and Statements**

9.1. The Provider shall submit its annual report and accounts to the Council forthwith on request and shall include an auditor's or independent examiner's report where appropriate, provided that:

9.1.1. if the Provider is a limited company its accounts must comply with the Companies Act 1985 as amended;

9.1.2. if the Provider is a registered charity its accounts must comply with the Charities Act 1993, the Charities (Accounting and Reports)

Regulations 1995 and the Statement of Recommended Practice for Charities issued by the Charities Accounting Review Committee;

- 9.1.3. if the Provider is registered under the Friendly Societies Act 1974 its accounts must comply with that Act;
  - 9.1.4. if the Provider is a sole trader or an unincorporated association its accounts should be prepared and independently inspected/audited as if it were a charity; and
  - 9.1.5. if the Provider is a State school its accounts should be prepared in accordance with the financial reporting procedures laid down by its local education authority under Section 48 of the School Standards Framework Act 1998.
- 9.2. The Provider shall keep all financial records for seven years from the end of the relevant financial year and keep them open to inspection and provided to the Council upon request.
  - 9.3. At its discretion the Council may require the submission of audited accounts where this is not a statutory requirement and the Provider shall comply with any such requests.
  - 9.4. The Provider shall acknowledge the Grant in any annual report and accounts indicating the purpose for which the Grant has been used.
10. **Repayment and Adjustment of Grant**
- 10.1. The Provider acknowledges and agrees that the Grant monies must be spent during the period for which it is awarded as detailed in the Proposal Form.
  - 10.2. The Provider shall promptly repay to the Council any Grant incorrectly paid to it as a result of any administrative error. This includes where either an incorrect value of Grant has been released, or where the Grant has been released in error before all applicable terms of this Agreement have been complied with by the Provider.
  - 10.3. The Provider agrees and acknowledges that the Grant shall not be increased in the event of any overspending by the Provider.
  - 10.4. The Provider must inform the Council in writing as soon as practicable of any offers of funding for the Project received from any other source at any time where this duplicates all or part of the Grant.
  - 10.5. The Provider agrees that in the situation described in Clause 10.5, the Council retains the right to require repayment of the relevant proportion of grant that has received duplicate funding or additional income.

11. **Claw back**

- 11.1. Grant Assets with a market value of greater than £2,500 shall not be sold or otherwise disposed of during the Asset Liability Period without the prior written approval of the Council. In the event of such sale or disposal, the Council shall be entitled subject to Clause 11.3 to receive from the Provider or the Provider's Sponsors a percentage of the value of such Grant Asset at the date of such sale or disposal in proportion to the Council's Grant contribution to the original purchase or acquisition price of such Grant Asset.
- 11.2. The Provider and the Provider's Sponsors shall not without the prior written approval of the Council, change the use from that which it was originally funded of any Grant Asset with a market value of greater than £2,500, during the Asset Liability Period. In the event of such change of use, the Council shall be entitled subject to Clause 11.3 to receive from the Provider or the Provider's Sponsors a percentage of the value of such Grant Asset at the date of such change of use in proportion to the Council's Grant contribution to the original purchase or acquisition price of such Grant Asset.
- 11.3. The amount which the Council shall be entitled to receive from the Provider or the Provider's Sponsors under Clauses 11.1 and 11.2 shall not in any event be more than the Council shall be required to recover from time to time by DCFS or any successor organisation.
- 11.4. Without prejudice to Clause 11.1 and unless otherwise agreed with the Council, the Provider and the Provider's Sponsors shall not dispose of Grant Assets below market value. The Provider and the Provider's Sponsors accept that the full market value of Grant Assets shall be assessed by an independent surveyor (for buildings, property, or land) or by another appropriately qualified expert (for equipment or vehicles).
- 11.5. The Council shall not be required to make any further contribution in the event that the Provider sells or otherwise disposes of any Grant Assets for less than the original purchase or acquisition price of such Grant Assets.
- 11.6. The Provider agrees to repay the Grant to the Council in whole or in part, in the event that any other funding listed in the Proposal Form is withdrawn or required to be repaid to the funder.
- 11.7. The Provider shall at all times throughout the Asset Liability Period:

11.7.1. keep all Grant Assets in good repair and undertake all things as may reasonably be considered necessary to ensure their proper maintenance and storage; and

11.7.2. take out and keep in force a comprehensive policy of insurance with reputable insurers to cover Grant Assets during the Asset Liability Period against all usual risks to their full replacement value.

## 12. **Warranties**

12.1. The Provider shall use the Grant only for the Project.

12.2. Except where agreed in writing by the Council, the Provider shall not use any Grant monies to pay for any expenditure incurred or committed prior to the date of the award notification letter issued to the Provider by the Council.

12.3. The Provider shall inform the Council immediately if for any reason a problem arises in relation to the Project which in the opinion of the Provider may make it difficult to continue with the Project.

12.4. The Provider shall not misapply all or any of the Grant and shall only use the Grant in accordance with the terms and conditions of this Agreement.

## 13. **Insurance and Indemnity**

13.1. The Provider shall indemnify the Council against any reasonable direct cost or expense incurred by the Council in connection with any action, claim, demand or proceedings in connection with this Agreement in relation to injury to, or death of, any person or loss of, or damage to any property, except so far as it arises out of the act or default of the Council.

13.2. The Provider shall comply with all statutory and other provisions to be observed and performed in connection with this Agreement including (but without limitation) the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 the Sex Discrimination Act 1975 and the Disability Discrimination Act 1995 and the Health and Safety at Work etc Act 1974 together with any obligations binding upon the Council and shall indemnify the Council against any actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever made as a result of any breach by the Provider of this Clause 13.2.

13.3. The Provider shall maintain a comprehensive policy of insurance with a reputable insurance company in the United Kingdom to cover its liability under this Agreement including:

- 13.3.1. public liability insurance for each and every claim of not less than £5 million; and
- 13.3.2. employer's liability insurance for each and every claim of not less than £10 million.
- 13.4. The Provider shall insure all Grant Assets against loss or damage for their full replacement value with a reputable insurer in the United Kingdom and shall provide the Council with certified copies of the policy of insurance upon request.
- 13.5. The Provider shall immediately supply the Council on request with evidence from its insurers or brokers that the Provider's insurance policies comply with this Clause 13 and the Provider shall supply to the Council on request copies of all insurance policies, cover notes, premium receipts and other documents necessary to establish compliance with this Clause 13.
- 13.6. If the Provider fails to take out or maintain insurance required as under this Clause 13 then the Council may immediately cease payment of the Grant under this Agreement by notice in writing.
- 14. **Termination**
- 14.1. If the Provider:-
  - 14.1.1. fails to use the Grant in support of the aims and objectives of SSEYCG as set out in Schedule 2.
  - 14.1.2. commits a breach of any of its obligations under this Agreement which is capable of remedy but which has not been remedied by the Provider within 14 days of notification by the Council of such breach;
  - 14.1.3. commits an Event of Default;
  - 14.1.4. agrees to a Change in Control as defined in s736 of the Companies Act 1985 (and for the purposes of this Clause 14.1.4 a person shall have "Control" of a company if he or it holds, directly or indirectly, shares which together with shares held by any persons acting in concert with him or it carry 50 per cent or more of the voting rights of that company and "Change in Control" shall be interpreted accordingly. Words and phrases defined in the City Code on Takeovers and Mergers shall have the same meaning here);
  - 14.1.5. has any director or partner or governor convicted of dishonesty;
  - 14.1.6. becomes bankrupt, makes a composition or arrangement with its creditors, or has a proposal for voluntary arrangements for the

composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;

- 14.1.7. has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver;
- 14.1.8. has a winding-up order made, or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- 14.1.9. has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;
- 14.1.10. has an administrator or an administrative receiver, as defined by the Insolvency Act 1986 appointed;
- 14.1.11. has possession taken, by or on behalf of the holders of any debenture secured by a floating charge, or any property comprised in, or subject to, the floating charge;
- 14.1.12. is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator or an administrative receiver, or which entitle the court to make a winding-up order, then the Council may terminate this agreement and cease payment of the Grant by notice in writing. The Council, in its absolute discretion, shall be entitled to demand immediate repayment of the whole or any part of the Grant.

## 15. **Accrued Rights and Remedies**

The termination of this Agreement shall not prejudice or affect any claim, right, action or remedy that shall have accrued or shall thereafter accrue to either party.

## 16. **Dispute Resolution Procedure**

- 16.1. If a dispute arises between the Council and the Provider in connection with or arising out of this Agreement, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt, bona fide discussion between the Authorised Officer and the Provider's Representative.
- 16.2. In the event such a dispute is not resolved within 10 days of it having been referred to the Authorised Officer and the Provider's Representative for discussion then either party may refer it to a senior officer or director of each party for resolution and the same shall meet for discussion within 10 days

- thereafter or such longer period as the parties may agree.
- 16.3. Subject to Clause 16.8, if the meeting referred to in Clause 16.2 does not resolve the matter in question then the parties shall attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure (the "Model Procedure"). To initiate mediation a party shall give notice in writing (a "Mediation Notice") to the other party requesting mediation of the dispute and shall send a copy thereof to CEDR asking CEDR to nominate a mediator in the event that the parties shall not be able to agree such appointment by negotiation.
  - 16.4. The parties shall use best endeavours to ensure that the mediation shall commence within 30 days of a Mediation Notice being served.
  - 16.5. Neither party shall terminate such mediation until each party has made its opening presentation and the mediator has met each party separately for at least one hour. Thereafter paragraph 14 of the Model Procedure shall apply.
  - 16.6. Neither party shall commence legal proceedings against the other until 20 days after mediation of the dispute has failed to resolve the dispute.
  - 16.7. The parties shall co-operate with any person appointed as mediator providing him or her in timely fashion with such information and other assistance as he or she shall require.
  - 16.8. A dispute which the parties agree is of a financial accounting nature or which otherwise relates to technical aspects of the Project (or any other matter which the parties agree to resolve by expert determination rather than mediation) may by agreement between the parties be referred to an expert for determination in accordance with Clauses 16.9 to 16.12 and the provisions of Clauses 16.3 to 16.7 shall not apply to such dispute.
  - 16.9. The expert (the "Expert") shall be jointly appointed by agreement in writing between the parties or, if the parties are unable to agree on the identity of the expert within 5 days after the date of a request from one party to the other for Expert determination, or if the person agreed upon is unable or unwilling to act, shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales (or his nominee) on the application of either party.
  - 16.10. If the parties do not agree that the dispute is of a financial accounting nature or which otherwise relates to technical aspects of the Project as provided above, then the dispute shall be resolved in accordance with Clause 16.3.



16.11. The Expert shall act on the following basis:-

16.11.1 the Expert shall act as an expert and not an arbitrator;

16.11.2 each party may make representations to the Expert;

16.11.3 any party may request that the Expert provides reasons for his decision, but the Expert shall have discretion whether or not to provide any such reasons;

16.11.4 (in the absence of fraud or manifest error) the decision of the Expert shall be final and binding on the parties;

16.11.5 each party shall provide the Expert with such information as he may reasonably require for the purposes of his determination. If either party claims any such information to be confidential to it then provided that in the opinion of the Expert that party has properly claimed the same as confidential the Expert shall not disclose the same to the other party or to any third party; and

16.11.6 the costs of the Expert (including the costs of any technical expert appointed by him) shall be borne in such proportions as the Expert may decide to be fair and reasonable in all the circumstances or if no such determination is made by the Expert by the parties in equal proportions.

16.12. The provisions of this Clause 16 shall be without prejudice to the general right of either party to seek resolution of any matter relating to this Agreement through the Courts or by other means.

17. Agency

17.1. Nothing in this Agreement shall be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as a contract of employment between the Council and the Provider.

17.2. The Provider shall not be, or be deemed to be, an agent of the Council and the Provider shall not hold itself out as having authority or power to bind the Council in any way.

18. **Publicity**

- 18.1. The Provider acknowledges that the Council may use the Provider's name in its own publicity materials.
- 18.2. The Provider shall ensure that the logos' of the Council and Sure Start are prominently displayed at the Centre in a manner agreed between the parties.
- 18.3. The Provider shall ensure that any publicity material in connection with the Project shall acknowledge the support given by the Council and Sure Start and the acknowledgement shall be in a manner and style agreed between the parties.

19. **Variations to this Agreement**

Any variation to this Agreement may only be made in writing and must be agreed by the parties.

20. **Data Protection**

- 20.1. The Provider shall comply with its obligations under the Data Protection Act 1998 (the "1998 Act") and the Computer Misuse Act insofar as performance of this Agreement gives rise to obligations under those Acts.
- 20.2. The Provider shall ensure that it does nothing knowingly or negligently which places the Council in breach of its obligations under the 1998 Act.

21. **Assignment and subcontracting**

- 21.1. The Provider shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Agreement or sub-contract any of its obligations under this Agreement. Notwithstanding any sub-contracting permitted hereunder, the Provider shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.
- 21.2. The Council shall be entitled to:
  - 21.2.1. assign, novate or otherwise dispose of its rights and obligations under this Agreement either in whole or part to any contracting authority; or
  - 21.2.2. transfer, assign or novate its rights and obligations where required by law to a body assuming the whole or part of the Council's business.

22. **Survival of Terms**

The terms of this Agreement shall (except in respect of any obligations fully performed prior to or at the termination or expiry of this Agreement) continue in force and effect notwithstanding termination or expiry of this Agreement.

**23. Rights And Duties Reserved**

All rights, duties and powers which the Council has as a local authority or which the Council's officers have as local authority officers are expressly reserved.

**24. Severance**

24.1. Each provision of this Agreement is severable and distinct from the others.

The parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If any such provision is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of this Agreement but (except to the extent in the case of that provision) it and all other provisions of this Agreement shall continue in full force and effect and their validity, legality and enforceability shall not thereby be effected or impaired, provided that the operation of this Agreement would not negate the commercial intent and purpose of the parties under this Agreement.

24.2. If any provision of this Agreement is illegal or unenforceable as a result of any time period being stated to endure for a period in excess of that permitted by a regulatory authority, that provision shall take effect within a time period that is acceptable to the relevant regulatory authorities subject to it not negating the commercial intent of the parties under this Agreement.

**25. Entire Agreement**

The parties acknowledge that this Agreement is the entire agreement between the parties with respect to the Project.

**26. No Waiver**

26.1. Failure by either party at any time or for any period to enforce any one or more of the provisions of this Agreement or to require performance by the other party of any of the provisions of this Agreement shall not:

26.1.1. constitute or be construed as a waiver of any such provision or of the right at any time subsequently to enforce all terms and

conditions of this Agreement; nor

26.1.2. affect the validity of this Agreement or any part thereof or the right of the parties to enforce any provision in accordance with its terms.

26.2. No waiver of any of the provisions of this Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with Clause 26.

## 27. **Notices**

27.1. Any notice required by this Agreement to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending the same by registered post or recorded delivery to the above address or such address or fax number as notified to each other.

27.2. Any notice served personally shall be deemed to have been served on the day of delivery, any notice sent by post shall be deemed to have been served 48 hours after it was posted and any notice sent by fax shall be deemed to have been served 24 hours after it was despatched.

## 28. **Equal Opportunities**

28.1. The Provider shall demonstrate to the Council that it has a policy to comply with its statutory obligations under the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000, Disability Discrimination Act 1995, accordingly, shall not treat any individual or group of people less favourably than others because of their colour, race, nationality, disability, ethnic origin in relation to decisions to recruit, train or promote its personnel.

28.2. If there should be any findings of unlawful racial/disability discrimination made against the Provider by any court or industrial tribunal, or an adverse finding in any formal investigation by the Commission for Racial Equality/Disability Rights Commission for the Provider shall take appropriate steps to prevent repetition of the unlawful discrimination.

28.3. The Provider shall upon request provide the Council with details of any steps taken under Clause 28.2.

28.4. The Provider shall set out its policy in equal opportunities/ race relations:

28.4.1. in instructions to those concerned with recruitment, training and promotion;

28.4.2. in documents available to its personnel, recognised trade unions or other representatives of its personnel;

- 28.4.3. recruitment, advertisements and other literature.
- 28.5. The Provider shall upon the request provide the Council with examples of instructions and other documents, recruitment advertisements and other literature.
- 28.6. The Provider shall observe so far as possible the Commission for Racial Equality's Code of Practice in the employment as approved by Parliament in 1983, which gives practical guidance to employers and others in the elimination of racial discrimination and the promotion of equality of opportunity in employment, including the steps that can be taken to encourage members of ethnic minorities to apply for jobs or take up training opportunities.

29. **Prevention of Corruption**

- 29.1. If the Provider or any partner or director of the Provider, any employee of the Provider or any person acting on the Provider's behalf (whether with or without the Provider's knowledge)

29.1.1. has offered, given, agreed to give, received or solicited to or from anyone a bribe, gift, consideration, inducement or reward of any kind for doing or not doing anything in relation to the Agreement, the Project, any other contract with the Council or any contract with any other local authority or public body, or

29.1.2. has committed any offence under the Prevention of Corruption Acts 1889-1916, or

29.1.3. has given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972,

then the Council may immediately cease payment of the Grant by notice in writing. The Council, in its absolute discretion, shall be entitled to demand immediate repayment of the whole or any part of the Grant.

30. **Third Party Contract Rights**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to and does not give any person who is not a party to it any rights to enforce any of its provisions.

31. **Proper Law and Jurisdiction**

This Agreement shall be subject to and construed and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the English courts.

EXECUTED AS A DEED BY THE PARTIES AND DELIVERED ON THE DATE WHICH FIRST APPEARS IN THIS AGREEMENT

The Common Seal of )

**WILTSHIRE COUNCIL** )

was hereunto affixed )

in the presence of )

**xxx**

In witness of which

[ ] and

[ ]

in pursuance of the Charities Act 1993 section 82 as charity trustees and on behalf of all the charity trustees of the trust named in this agreement have executed this deed on the date which first appears in this agreement.

Signed .....

**Trustee**

in the presence of:

*(signature, name, address and description of attesting witness)*

Signed .....

**Trustee**

in the presence of:

*(signature, name, address and description of attesting witness)*

**SCHEDULE 1**

**Proposal Form**



## **SCHEDULE 2**

### **Aims and Objectives of the Council for SSEYCG**

#### **SSEYCG shall aim to:**

- Support the delivery of the Government's ten year strategy.
- Support the Government's efforts to achieve the public service agreement targets to improve the development of young children, narrow the gap in achievement between children in the most disadvantaged areas and the rest of England and contribute to reducing the proportion of children living in workless households through childcare strategy.
- Promote a coherent pattern of childcare services for families.
- Support the Council to secure sufficient childcare services to meet the needs of parents who require childcare in order to work or to prepare for work.
- Improve the general quality of childcare services in Wiltshire.
- Ensure that diversity of provision of childcare services in Wiltshire is maintained and enhanced to produce a wide range of choices for parents.

**SCHEDULE 3**

**Authorised Officer and Provider's Representative**

<b><u>Authorised Officer</u></b>	<b><u>Provider's Representative</u></b>
<p><b>Name:</b> Sarah Clover <b>Position:</b> Childcare Manager <b>Address:</b> Wiltshire Council 9 Ascot Court Trowbridge <b>Postcode:</b> BA14 0XA <b>Telephone:</b> 01225 785 677 <b>Fax:</b> 01225 785 699 <b><u>Email:</u></b> <u>sarah.clover@wiltshire.gov.uk</u></p>	<p><b>Name:</b> <b>Position:</b> <b>Address:</b> <b>Postcode:</b> <b>Telephone:</b> <b>Fax:</b> <b>Email:</b></p>

## SCHEDULE 4

### Asset Liability Period

	<b>Grant Value</b>	<b>Asset Liability Period (from date of acquisition or completion of capital works)</b>
1. Equipment and vehicles	£500 and above	Reasonable economic life of the asset as determined by normal accounting practices
2. <u>Refurbishment, extension or construction of buildings or other property</u>	£0 to £100,000	25 years
Purchase of leasehold buildings / land	N/A	Either: <ul style="list-style-type: none"><li>• Unexpired period of the lease; or</li><li>• 80 years;</li></ul> Whichever of the above is the shorter.

**SCHEDULE 5**

**Grant Asset Register**

Details of Grant Asset	Date of purchase	Grant Asset number, serial number or distinguishing mark	Purchase invoice reference	Replacement Value	Location of Grant Asset	Date of Disposal	If Grant Asset on loan or hire			
							Who has it	Date lent	Location	Date returned

**EXAMPLE OF QUALITY AND ACCESS CAPITAL GRANT APPLICATION FOR  
CHILDMINDERS, PETERBOROUGH CITY COUNCIL**

DATED \_\_\_\_\_ 2009

(1) PETERBOROUGH CITY COUNCIL

AND

(2) Childminder – (insert name)

## AGREEMENT

---

QUALITY AND ACCESS CAPITAL GRANT PAYMENT FOR  
PROJECT TO ENHANCE THE LEARNING ENVIRONMENT FOR CHILDREN

---

**AN AGREEMENT** made on ..... day of .....2009

**BETWEEN**

- (1) **PETERBOROUGH CITY COUNCIL** (the "Council") of Bridge House, Town Bridge, Peterborough; and
- (2) **NAME** (the "Childcare Provider") of

**WHEREAS**

- (i) The Childcare Provider wishes to carry out a Project to improve the indoor and outdoor environment in accordance with their Application set out in Appendix 1 ("the Project").
- (ii) The Council's Early Years and Childcare Team have a new Capital Grant Fund, for which a large proportion has been allocated to the Private, Voluntary and Independent Childcare Sector ("PVI Sector") in Peterborough. The Grant Funding comes from the Department for Children, Schools and Families ("DCSF") with specific objectives, set out in Appendix 2.
- (iii) The Childcare Provider wishes to use the Grant Fund to carry out the Project and undertakes to do so in accordance with the terms and conditions set out in this Agreement.

**NOW THIS DEED WITNESSETH** as follows:-

**1. Definitions**

**"Application"** means request from the Childcare Provider in response to Grant Fund details published by the Council set out in Appendix 1.

**"Contract Commencement Date"** means 2009

**"Council Contact"** means a member of the Early Years and Childcare Department. When writing to the Council in relation to this Agreement, all correspondence should be sent to "The Childcare Sufficiency and Sustainability Officer, Early Years and Childcare Team, Peterborough City Council, Bayard Place, Broadway, Peterborough, PE1 1FD".

**"Contract Period"** means 5 years

**"Grant Fund"** means £4136.40

**"Specified Period"** means one year from the data of the first payment of the Grant Fund.

**"Project"** means the purpose for which the Childcare Provider wishes to use the Grant Fund as set out in Appendix 1.

## **2. Childcare Provider Obligations**

### **2.1. Whilst conducting the Project, the Childcare Provider:**

- 2.1.1. acknowledges that the Grant Fund received is being administered by the Council and the assistance is provided to the Childcare Provider solely for the purposes of the elements of the Project that have been approved in writing by the Council.
- 2.1.2. agrees to use the grant fund to conduct the elements of the Project in accordance with the Application set out in Appendix 1;
- 2.1.3. shall exercise all reasonable skill, care and attention to ensure that the funding is used correctly and that the grant funding remains to the benefit of the Early Years and Childcare Sector in Peterborough for the Contract Period;
- 2.1.4. shall comply with the DCSF Terms (Appendix 2) in carrying out the Project and shall use all reasonable endeavours to enable the Council to comply with its obligations under the DCSF Terms; and
- 2.1.5. shall make no changes to the use of the Grant Fund unless approved in writing by the Council, thereby ensuring that funds are used in accordance with DCSF Terms.
- 2.1.6. Grants awarded by the Council may only be used for expenditure incurred or committed by the Childcare Provider either:
  - 2.1.7. after notification of the outcome of the Application; or
  - 2.1.8. prior to an application providing the expenditure was incurred during the 2008/2009 financial year.
- 2.1.9. The Council Contact shall immediately be informed in writing if there are any changes to the information as provided in the Application. Failure to comply with this Clause may result in loss of any further funding and legal action being sought to recover the Grant Fund awarded.
- 2.1.10. Within one year of receiving the Grant Fund, the Childcare Provider will begin to undertake the local quality framework as set by the Council's Early Years and Childcare Team. This is to ensure there is a commitment from the Childcare Provider to improve the quality of childcare provision, which is an underlying core policy objective of the DCSF.

## **3. Grant Fund**

- 3.1. The Grant Fund will not be increased in the event of any overspend.
- 3.2. The total Grant Fund awarded for the Project detailed in the Application must be spent within the Specified Period.
- 3.3. If the full amount of the Grant Fund is not spent by the end of the Specified Period, the surplus must be returned to the Council.

## **4. Project Monitoring and Audits**

- 4.1. The Childcare Provider must complete and return any monitoring requirements as requested by the Council Contact in relation to the Grant Fund.

- 4.2. Copies of all receipts for items purchased with the Grant Fund will be supplied to the Council Contact within the Specified Period.
- 4.3. All financial records and accounts including receipts for items purchased with the Grant Fund will be kept by the Childcare Provider for at least two years from the completion of the Project as set out in the Application. This information must be made available to the Council Contact if so required.
- 4.4. Duly authorised staff and agents of the Council may visit the Childcare Provider during the Contract Period at a reasonable time, prearranged by the Council Contact, in order to monitor the spending of the Grant Fund. The Childcare Provider shall be notified in writing of any item requiring action following a monitoring visit.

## **5. Liability**

- 5.1. The Childcare Provider acknowledges that the Council has no liability to pay for the Project in excess of the Grant Fund.
- 5.2. The Childcare Provider shall:
  - 5.2.1. reimburse the Council in the event and to the extent any grant assistance is required by the DCSF to be repaid; and
  - 5.2.2. indemnify the Council against any claim made against the Council arising in either case out of the failure by the Childcare Provider to comply with its obligations in this Agreement or as a result of a negligent act or negligent omission by the Childcare Provider or its employees and contractors arising out of the Project set out in the Application.

## **6. Project Assets**

- 6.1. Ownership of equipment or other assets purchased with the Grant Fund shall not be transferred or disposed of to any third party without prior written consent from the Council Contact at least three months before the planned disposal.
- 6.2. Such consent may be conditional upon repayment of an appropriate proportion of the capital value of the asset. Such decision is at the discretion of the Council.

## **7. Publicity**

- 7.1. Receipt of the Grant must be acknowledged in any publicity materials which are produced about the work supported by the Grant.
- 7.2. The Council may use the Recipient's name and project name in the Council's publicity materials. The Recipient must inform the Council Contact of situations where confidentiality is a particular issue.

## **8. Variation Clause**

- 8.1. Should either the Council or the Childcare Provider wish to vary the terms of the Contracts including any of the appendices, this must be made in writing by mutual consent of both parties.



## 9. Termination of Agreement

9.1 The Childcare Provider shall notify the Council in writing if it wishes to terminate the Agreement.

9.2 The Council may by notice in writing terminate this Agreement if the Childcare Provider:

9.2.1 is not in compliance with the Project as set out in the Application;

9.2.2 has breached any term of this Agreement and such breach is not remedied within one month of the Council giving the Childcare Provider written notice of the breach;

9.2.3 (if the Childcare Provider is a corporate body) a receiver, administrator or liquidator has been appointed over it, it makes a composition or arrangement for the benefit of its creditors, or winds itself up;

9.2.4 (if the Childcare Provider is an individual) is subject to its estate being sequestered and the sequestration has not been discharged, annulled or reduced, or the Childcare Provider is subject of a bankruptcy restrictions order or an interim order;

9.2.5 Ceases to carry on its business as a childcare provider;

9.2.6 has its registration or accreditation which it must hold or maintain withdrawn; or

9.2.7 commits or causes the commission of a criminal offence in course of its operation as a childcare provider (which includes any of its employees).

9.3 No period of notice is required by the Council in respect of termination but notice shall state the date on which it shall have effect.

9.4 In the event of the termination of this Agreement by either the Council or the Childcare Provider, the Council shall be entitled to:

receive from the childcare provider monies paid in respect of the grant fund for the purposes of the project on a sliding scale basis from the contract commencement date as follows;

within 1 year - 100% (£4136.40);

during year 2 - 70% (£2895.48);

during year 3 - 50% (£2068.20);

during year 4 - 25% (£1034.10);

during year 5 - 10% (£413.64);

after the 5th year - 0% (£0.00);

less the cost paid when new of any item purchased with the grant fund if the item is returned to the Council in a re-usable condition as determined by the Council.

9.5 The Council may decide not to invoke the claw back arrangements if:

9.5.1 the Project remains to the benefit of the Early Years and Childcare sector after the contract has been terminated; or

- 9.5.2 the Council decides to allow the Childcare Provider to close or cease operating by withholding further funding, having given regard to the Council's duty to secure sufficient childcare.

## **10. Health & Safety**

- 10.1 The Childcare Provider and all persons (including any sub-contractors) employed by it shall throughout the Project comply fully with the requirements of the Health and Safety at Work Etc Act 1974, the Management of Health and Safety at Work Regulations 1999 and of any other Acts, Regulations and Approved Codes of Practice relating to the health and safety of employees and others who may be affected by the Childcare Provider's activities.
- 10.2 The Childcare Provider shall in the performance of the Project adopt safe systems of work in order to protect the health, safety and welfare of those affected by its work activities. The Childcare Provider's safe systems of work shall be no less effective than any relevant safe systems of the Council which may from time to time during the Agreement be amended by the Council and notified to the Childcare Provider.

## **11. Equalities**

- 11.1 The Childcare Provider shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, Disability Discrimination Act 1999 and/or Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 relating to employment and shall take reasonable steps to ensure observance of the same by his employees, agents or sub-contractors/sub-suppliers engaged during the Project.

## **12. Human Rights Act**

- 12.1 The Childcare Provider shall in the performance of the Project, comply with the provisions contained in the Human Rights Act 1998.

## **13. Prevention of Corruption**

- 13.1 The Council may forthwith cancel this Agreement in accordance with Clause 9 if the Childcare Provider, or any person employed by the Childcare Provider or acting on its behalf, commits an offence under the Prevention of Corruption Acts 1889-1916, or shall have given any fee or reward, the receipt of which is an offence under section 117(3) of the Local Government Act 1972.

## **14. Data Protection**

- 14.1 The Childcare Provider shall comply with obligations placed on it under the Data Protection Acts 1984 and 1998 (as amended or re-enacted from time to time) (including, where appropriate, obtaining or changing its registration) insofar as the performance of the Services gives rise to obligations under the 1984 and 1998 Acts.

- 14.2 The Childcare Provider shall provide the Council with such information as the Council may reasonably require:-
- 14.2.1 to satisfy itself that the Childcare Provider is complying with its obligations under Sub-Condition 1 above; and/or
  - 14.2.2 in pursuance of any statutory duties and/or responsibilities that the Council may have in relation to Data Protection.
- 14.3 The Childcare Provider shall not knowingly do anything which places the Council in breach of obligations under the 1984 and 1998 Acts.
- 14.4 The Childcare Provider shall indemnify and keep indemnified the Council against all actions and/or claims against the Council arising from the Childcare Provider's alleged or actual breach of Data Protection legislation referred to in Sub-Condition 1 above, occurring as a result of the Childcare Provider's conduct within the terms of the Service Contract.

### **15. Third Party Rights**

- 15.1 Pursuant to the Contracts (Rights of Third Parties) Act 1999, section 1(2) (a), the parties intend that no term of this Agreement may be enforced by any person who is not party to this Agreement. This does not affect any right or remedy of a third party which exists or is available from the Act.

### **16. Freedom of Information Act 2000**

- 16.1 Notwithstanding anything to the contrary contained or implied in any documents, negotiations leading to the formation of this Agreement:
- 16.1.1 the Council shall be entitled to publish and/or release any and all terms or conditions of this Agreement, the contents of any documents and/or information relating to the formation of this Agreement under the provisions of The Freedom of Information Act 2000 as it sees fit; and
  - 16.1.2 nothing contained in this Agreement shall prevent the Council from disclosing and/or publishing under The Freedom of Information Act 2000 any term or condition or information contained in or relating to the formation of this Agreement.
- 16.2 The Childcare Provider shall:
- 16.2.1 co-operate with the Council and supply to it all necessary information and documentation required in connection with any request received by the Council under The Freedom of Information Act 2000; and
  - 16.2.2 supply all such information and documentation at no cost to the Council and within seven days of receipt of any such request.
- 16.3 The Childcare Provider shall not publish or otherwise disclose any information contained in this Service Contract or in any negotiations leading to it without the Council's previous written consent.

### **17. Waiver**

17.1 If the Council fails to exercise or delays in exercising any right or remedy to which it is entitled under this Agreement or at law, then this shall not constitute a waiver of any such right or remedy.

**18. Law**

18.1 This Agreement will be governed by and construed according to the laws of England and Wales.

**IN WITNESS** whereof the parties hereto have executed this Agreement upon the dates set out below.

**Signed by Authorised Officer, the Council**

.....  
.....

Name

Date

**Signed on behalf of the Childcare Provider**

.....  
.....

Name

Date

## **APPENDIX 1**

See following pages.

## APPENDIX 2

### DCSF objectives/terms

The Grant has three aims:

1. To improve the quality of the learning environment in early years settings to support delivery of the EYFS (Early Years Foundation Stage), with a particular emphasis on improving play and physical activities; and ICT resources
2. To ensure all children, including disabled children, are able to access provision
3. To enable PVI (private, voluntary and independent), providers to deliver the extension to the free offer for 3 and 4 year olds and to do so flexibly

Our (DCSF) expectation is that the majority of this capital grant is used to improve the quality of the environment in private, voluntary and independent (PVI) early years and childcare settings both to support higher quality experiences for young children and to ensure that all children can access services and benefit fully from them although spending on the maintained sector is not precluded.

The capital grant must be used for the three broad purposes set out above but it is for the Local Authority to decide how best to deploy the grant for maximum impact and value for money.

**EXAMPLE OF FUNDING CONTRACT, TAMESIDE METROPOLITAN BOROUGH COUNCIL**

**Funding Contract for The Early Years Foundation Stage Quality Improvement Capital Grant**

Number of application	
Name of Childcare Provider	
Address of Childcare Provider	
Amount of Grant	The amount of Grant payable will be advised in writing for each strand of the agreement ( <b>Environment, Inclusion and Flexible Entitlement</b> ) as the scheme progresses. <b>All amounts allocated throughout the scheme will be included in the terms of this agreement.</b>
Period of Agreement	19 <sup>th</sup> August 2009 to 18 <sup>th</sup> August 2015

Name and address of Local Authority:

Tameside MBC  
 Children's Centres and Extended Schools  
 Room 2.42, Council Offices  
 Wellington Road  
 Ashton under Lyne  
 OL6 6DL

In accordance with the guidelines for accessing funding the Childcare Provider (“hereinafter referred to as the Provider”) agrees to abide by the following terms set out in this contract.

1. The Provider agrees to:

- 1.1 To use the monies to fund the project shown by its application form and as agreed by the application assessment panel.
- 1.2 Abide by the conditions of accessing funding set out by Tameside Metropolitan Borough Council (TMBC).
- 1.3 Ensure that Capital Grant funding is only claimed for future expenditure - funding cannot be used for expenditure already incurred other than Capital Grant related expenditure.
- 1.4 Allow TMBC or their appointed representative access with a reasonably agreed notice to review business records in respect of the Capital Grant in order that they may undertake a business health check to determine the conditions of the grant (such check to include details about ownership of property).
- 1.5 The award being separately entered on any financial records and kept as restricted funds (not to be used for general purposes).
- 1.6 Spend each Grant Payment within the corresponding Grant Period.
- 1.7 Provide information to the TMBC Early Years Quality Team regarding the outcomes and achievements of the grant on a regular basis during support visits.
- 1.8 Provide TMBC Early Years Quality Team with an end of grant final evaluation report by the end of the final Grant Period.
- 1.9 Keep all financial records and accounts including receipts and invoices for at least 6 years.
- 1.10 Ensure equality in relation to workforce matters and that no person will be discriminated against either directly or indirectly contrary to anti-discrimination legislation.
- 1.11 Ensure that services are delivered in an accessible and appropriate manner, fairly and without unlawful discrimination to all groups irrespective of race, gender, disability, sexuality and religion.
- 1.12 Return to TMBC any grant monies that have not been spent within the financial year in which they are advanced, for whatever reason.
- 1.13 Acknowledge that all equipment, assets or resources purchased with Grant Payments will be the property of TMBC and will remain so until the end of its economic life.
- 1.14 Regular audit inspections will be conducted on reasonable notice during normal business hours. All financial records and equipment directly related to the Capital Grant must be made available for inspection during these visits.
- 1.15 All equipment or assets purchased with the Capital Grant must be properly maintained, serviced and repaired by the Provider at its own cost.
- 1.16 Not to dispose of any equipment/resources bought with Capital Grant funding which has not reached the end of its economic life without prior agreement of TMBC.



- 1.17 If the Provider ceases to exist, any equipment/resources bought with Capital Grant funding which has not reached the end of its economic life must be returned to TMBC as owner forthwith.
  - 1.18 To maintain Public Liability Insurance with a reputable company for the sum of not less than £5,000,000.
  - 1.19 To work towards the quality requirements included within Nursery Education Grant local guidelines 2008-2010 as set out in schedule one attached and to use their best endeavours to work toward achieving any change proposed by any subsequent guidelines.
  - 1.20 All private nurseries must ensure that plans are in place for the employment of Early Years Professionals by the national deadline of 2015. This might include members of staff undergoing the Early Years Foundation Degree/Early Years Pathway or plans to employ Early Years Professionals.
  - 1.21 Include the grant funding in any of their marketing and publicity. TMBC will provide logos when the grant is distributed. The Provider must also agree if TMBC wishes to arrange any publicity about the grant.
  - 1.22 Comply at all times with the Health & Safety at Work Act
  - 1.23 Enrol on the Families Information Service Database and supply up to date information to them when requested.
  - 1.24 To agree to a business health check to be undertaken by TMBC or their appointed representative.
  - 1.25 To comply with any reasonable actions identified by the business health check as these will form part of the overall conditions of the grant. In particular those actions which may be required to ensure that legal requirements are being met. Legal requirements can include, but are not restricted to: business and website registration, insurances, data protection, compliance with health and safety documentation and risk assessment and employment procedures including contracts, offer letters, grievance and disciplinary procedure.
2. The Provider acknowledges that it is not entitled to further Grant Payments and must repay Grant Payments if required if and to the extent that TMBC suspends payment of the monies or any part of the monies at any time at its discretion or to require the repayment of the whole or part of a given Grant Payment already made and not utilised in all material respects with this Agreement in the following circumstances:
- 2.1 There is any breach of this contract by the Provider which is not reasonably capable of being remedied.
  - 2.2 The application form was completed dishonestly or with inaccurate or misleading information.
  - 2.3 The Provider ceases to use the asset or resource for the reason given in the application form.
  - 2.4 The Provider ceases to fulfil its aims & objectives as stated in the application form.
  - 2.5 The Provider ceases to satisfy the requirements of Ofsted
  - 2.6 The Provider or any member of the Provider's organisation acts dishonestly or negligently in respect of the Grant Payment provided.
  - 2.7 The Provider fails to complete the monitoring reports as required by Paragraph 1 above.

If the Provider ceases to exist through misappropriation of funds then monies advanced will be recovered through legal action.

If the Provider otherwise ceases, is dissolved, made insolvent or put into liquidation then the Provider will co operate in any investigation to identify the reasons for closure.

- 2.8 Any repayment required by the terms of this agreement shall be on a diminishing sliding scale within:-

Year 1 = 83.43%

Year 2 = 66.68%

Year 3 = 50.02%

Year 4 = 33.36%

Year 5 = 16.70%

Year 6 = NIL

3. Provided the Provider shall comply with the terms & conditions of this contract TMBC through Children's Centres and Extended Schools will:

- 3.1 Provide support where possible with funding applications and assistance in completing forms/business health check
- 3.2 Process all applications and distribute monies in a reasonable time frame
- 3.3 Provide appropriate training opportunities through TMBC Early Years Quality Team and information on other available training.

4. Freedom of information

- 4.1 Definitions:

"FOIA" means the Freedom of Information Act 2000 together with any amendments, regulations and codes of practice made pursuant to the Freedom of Information Act 2000.

"Council-held Information" means all records and information that are held by the Council in relation to or created pursuant to this Agreement (including this Agreement itself) and the procurement process leading to the award of this Agreement, including all records and information supplied by or relating to the Provider.

"Provider-held Information" means all records and information that are held by the Provider in relation to or created pursuant to this Agreement (including this Agreement itself).

"Subcontractor-held Information" means all records and information that are held by any subcontractor of the Provider and which relate to or were created pursuant to this Agreement or the subcontract (including the subcontract itself).

“Information” means any or all Council-held Information, Provider-held Information and Subcontractor-held Information.

“Request for Information” means (in this Agreement) a request for information under Section 8 of FOIA.

- 4.2 The Provider understands and acknowledges that the Council is subject to the requirements of the FOIA and agrees to assist and cooperate with the Council to enable it to comply with its obligations to disclose Information under FOIA.
- 4.3 The Provider shall provide the Council with a copy of all Provider-held Information required by the Council to comply with any Request for Information. Such Provider-held Information shall be provided within 5 working days of a request from the Council (or such other period as the Council shall specify) and in such form as the Council may specify.
- 4.4 At any time the Provider may identify in writing Information that it considers commercially sensitive, a trade secret, confidential, subject to legal restrictions on disclosure or subject to any other FOIA exemption, in which case the Council may consult with the Provider before releasing such Information and have due regard to the Provider’s comments or objections.
- 4.5 Notwithstanding sub-clause (4) above, the Council shall be solely responsible for determining whether Information is exempt from disclosure under FOIA and for determining, in its absolute discretion, the Information to be disclosed in response to a Request for Information.
- 4.6 The Provider understands and acknowledges that the Council may be obliged under FOIA to disclose Information without consulting or obtaining consent from the Provider.
- 4.7 If the Council at the Provider’s request seeks to rely upon a FOIA exemption, the Provider shall indemnify the Council against any costs, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner. The Provider shall also indemnify the Council and hold it harmless from and against all liability, costs, claims, actions, losses, damages and expenses whatsoever, arising directly or indirectly as a result of any decision by the Information Commissioner that Information which the Provider may regard as being exempt shall be disclosed under the FOIA or other appropriate legislation or codes of practice.
- 4.8 The Council shall not be liable for any loss, damage, harm or other detriment, however caused, arising from any disclosure made pursuant to a Request for Information.

- 4.9 The Council may, pursuant to a Request for Information, disclose all Information, in any form, as necessary to respond to that Request for Information.
- 4.10 The Provider shall notify any subcontractor of the provisions of this Clause and any subcontract shall contain terms equivalent in all respects to this Clause entitling the Council to provision of Subcontractor-held Information as if the information was Provider-held Information. The Provider shall fully indemnify the Council for any failure to comply with this obligation and no failure of any subcontractor shall relieve the Provider of its obligations under this Clause.
- 4.11 Without prejudice to the provisions regarding indemnity and liability in sub-clauses (7), (8) and (10), the Council and the Provider shall bear their own administrative costs in relation to dealing with any Request for Information or disclosure under FOIA.
- 4.12 The provisions of this Clause shall take precedence over any clause or condition requiring the Council to hold information in confidence.

Signed by the organisations representative whose responsibility it is to see that the funding is properly applied

Sign \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_

Signed by the representative of TMBC

Sign \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_

**SCHEDULE ONE**  
**NURSERY EDUCATION GRANT**  
**LOCAL GUIDELINES 2008-2010**

## **EXAMPLE OF APPROVAL PROCESS FOR CAPITAL FUNDING, LEICESTERSHIRE COUNTY COUNCIL**

The process is exactly the same for a provider as for a childminder.

- An initial expression of interest is completed, giving very basic details about the project they wish to undertake and how their idea will meet the aims and objectives of the grant.
- If the initial idea meets the objectives, applicants are invited to complete a detailed application form. This explains the specifics of the project together with quotes, how it meets the objectives of the funding and how it will enhance the learning environment. Each applicant has to submit a business plan. Providing their business plan meets certain criteria, their application is submitted to a representative panel.
- The representative panel includes finance, specialists in early years education and settings, business support, rep from NDNA and a rep from specialist teaching. The panel then decide whether the scheme is viable and agree on an amount that will be allocated. This will either be the quoted cost, providing the panel is satisfied that 3 reasonable quotes have been obtained, or a contribution towards the total funding.
- Each applicant receives a letter informing them of the panel decision. For some this could be that more information is required before a decision can be made.
- All successful applicants will receive a detailed contract, which specifies the amount of funding agreed, and the claw back requirements, together with a time line of how long this will be over.
- All contracts are agreed to and signed by the applicant, then counter signed by the service manager or assistant director. A copy is then returned to the applicant for information.
- Applicants will receive a letter at the same time as a copy contract is returned, which advises them that the work/purchasing equipment can begin.
- Applicants will submit receipts and/or invoices for the project, and a payment is made to the applicant, who then will pay the contractor/supplier.
- Once the project is complete, the setting will be visited by one of the Development Advisors, to ensure that the project has benefit the children.



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