

Estimated whole life value of the bespoke open framework**£30.42 million****Strategic procurement context**

Scottish Government and local authorities have committed to making an unprecedented investment in ELC through near doubling of the funded entitlement from 600 to 1140 hours per year from August 2020 for all three and four year olds, and eligible two's.

In order to ensure that funded ELC is delivered in high quality settings, a 'Funding Follows the Child' approach is being introduced. The approach is 'provider neutral' and underpinned by a new National Standard that all settings must meet regardless of whether they are in the public, private, third sector or childminders.

Sustainable procurement

In relation to the economic and social benefits resulting from this procurement, Scottish Government and COSLA have agreed a multi-year funding package which includes funding to support payment of sustainable rates for funded ELC; to enable payment of at least the real Living Wage (RLW) rate for delivery of funded hours; and to provide a free meal to every child attending a funded ELC session.

In addition the National Standard establishes the criteria against which all funded ELC providers must be assessed. These criteria include a requirement for providers to commit to and demonstrate that Fair Work Practices are operating within their settings.

In terms of environmental benefits, there may be scope to influence the supply of free meals in funded ELC settings. From August 2020 the council will pay a fixed fee of £3 per meal. The Early Years (EY) Expansion Programme is currently reviewing options for the efficient supply of meals and snacks, in collaboration with existing providers.

All but two providers of ELC in Angus are small to medium size enterprises (SMEs). As such the planned procurement procedure and open framework arrangement have been designed with inclusion and flexibility in mind.

For example the council has recognised that most ELC providers will be unfamiliar with tendering for public contracts and, without support, may be reluctant to participate in the process. To remove this barrier the council is working with the Supplier Development Programme on a bespoke training package, free to all ELC providers who qualify as SMEs.

Community benefits

Expansion of funded ELC entitlement from 600 to 1140 hours per eligible child per year will see childcare bills reduce substantially for many parents but it is unlikely to affect a change in their working patterns if they work fulltime already. For a smaller number, 1140 hours may be an incentive for them to return to work or, in the case of part-time workers, increase their working hours. While this a key aim of the EY Expansion Programme across Scotland, how we procure a funded ELC service from a range of third party providers in Angus will not influence this benefit. A key aim of this procurement exercise is simply to increase flexibility and choice for parents.

Procurement process**Process**

While Public Contracts (Scotland) Regulations 2015 determine that a public contract opportunity of this type (Social and Other Specific Services) and value (£30.42m) must be advertised and awarded via PCS and the Official Journal of the European Union (OJEU), the EU light touch regime (LTR) provisions (Regulations 74-76) lend flexibility to the procedure.

As such the council proposes to develop a bespoke, open framework arrangement for funded ELC which will have a duration of three years from 1 August 2020 to 31 July 2023, with an option to extend the provision by up to two further years. Unlike more conventional frameworks this will allow the addition of new market entrants throughout the life of the open framework.

The procurement is proposed to be openly advertised on PCS for onward transmission to the OJEU. The tender submission deadline will be mid-December for candidates bidding to deliver funded ELC from 1 August 2020. Thereafter the framework will remain open to all new candidates.

User Intelligence Group (UIG)

The specification of requirements and associated tender documents are being drafted by an expert panel of internal stakeholders which includes the Service Leader for Early Years (EY) and Early Intervention, the Programme Manager for ELC Expansion, EY operational team leaders and EY staff. An authorised procurement officer from the Procurement & Commissioning Team leads the process.

Lotting strategy

The UIG agree there is no discernible benefit to lotting contracts for the provision of funded ELC. Lotting is applied where there is a need to spread risk, build service resilience and/or target resource where demand is highest. Putting in place an open framework and imposing no limit to the number of providers who may join, meets these objectives.

Provider engagement

A Prior Information Notice was published in June 2019, inviting external stakeholders to take part in a survey seeking their views on the council's outline specification for funded ELC. A small number of providers also volunteered to take part in provider engagement meetings where they were able to scrutinise and test the council's approach to calculating a sustainable rate for funded ELC.

Model documents

Scotland Excel has been commissioned by Scottish Government to provide practical support to local authorities in preparation for ELC expansion and as such are developing a suite of tender documents, including model terms and conditions of contract. At the time of writing, draft documents are out for consultation and the council is preparing to offer feedback. The council will use these model documents, adapted as necessary to align with our local plans and policy.

Business probity and financial standing

The EU LTR determines that the council must establish whether grounds exist for the exclusion of certain candidates from the procurement procedure and as such a form will be included in the tender documents inviting candidates to declare whether any of the mandatory grounds for exclusion apply.

A financial risk assessment has concluded that, while the potential whole life value of the open framework is £30.42m, awarding contracts to multiple providers (anticipating 60) spreads this risk substantially and as such a light touch review of candidates' financial standing is sufficient for this procurement.

The light touch evaluation will involve submission of three years annual accounts, or an acceptable equivalent depending on the type of provider, the previous twelve months occupancy data for the setting and an up to date service continuity plan.

An assessment of cash flows and identification of material negative trends will be carried out. Additional evidence will be sought for those providers identified as presenting a higher risk, including financial budgets / forecasts, operational forecasts and/or management accounts.

Settings will be required to have in place adequate insurances, including for public liability and, where applicable, employer liability each to the sum of £10m. Appropriate vehicle insurances, including for business use, will be required where settings use vehicles to transport children.

Price evaluation

There is no commercial element to this procurement. The council will state a fair price (the sustainable rate) for an hour of funded ELC and will award contracts to all candidates who have accepted that price and who have been able to demonstrate, to the satisfaction of the council, that they meet the National Standard.

Quality evaluation

The National Standard criteria were published by Scottish Government in April 2019. The criteria definitions and guidance on how they should be evaluated can be found at 'Funding Follows the Child and the National Standard for Early Learning and Childcare Providers' - ['Principles and Practice'](#) and ['Operating Guidance'](#).

For ease of reading, the criteria headings are as follows:

1. Staffing, leadership and management
2. Development of children's cognitive skills, health and wellbeing
3. Physical environment
4. Self-evaluation and improvement
5. Parent and carer engagement and involvement in the life of the setting
6. Inclusion
7. Business sustainability*
8. Fair work practices, including payment of the Living Wage
9. Payment process
10. Food

The UIG agree that eight of the ten criteria will be judged on a pass/fail basis with 'development of children's cognitive skills, health and wellbeing' and 'self-evaluation and improvement' each scored out of 100. A minimum acceptable score will not be stipulated for these latter criteria. Instead, if all other criteria are met and Care Inspectorate grades are 'good' (4) or better in all four quality themes, these scores will be used as a baseline from which service improvement will be monitored and measured.

**'Business sustainability' (criteria 7) will be evaluated as part of 'business probity and financial standing'.*

Package of support

The EY Central Team will provide a three-tiered package of support to all funded ELC providers and to those not yet delivering funded ELC but who wish to be considered. Support will include:

- Universal support - aimed at ensuring compliance with the National Standard;
- Targeted support - for settings who have been identified as requiring additional input in order to maintain quality of provision and to remain a funded ELC provider; and
- Chargeable support – on request and where there is no imminent risk to quality of provision

Contract management

Contract management by the Procurement & Commissioning Team will take a risk-based approach. A Contracts Officer will carry out an annual review of all funded ELC providers to assess if they continue to be viable businesses and compliant with the full terms and conditions of contract.

Sustainable rate calculation

In 2016, Scottish Government commissioned Ipsos MORI to produce [Costs of Early Learning and Childcare Provision in Partner Provider Settings](#). The online survey received 191 responses from 222 provider settings. A version of the survey was adapted for childminders and ten childminder interviews were conducted.

Angus Council has used the Ipsos MORI cost data as a starting point for calculating a sustainable rate for funded ELC in Angus. The council has supplemented the research by consulting with a mix of our own local providers. All have agreed that the council's approach is logical, fair and transparent and all have welcomed the opportunity to share their views.

Broadly we have taken 70th decile cost data from the Ipsos MORI survey responses. 70th decile data fixes our baseline rate where the costs of 70% of those surveyed in 2016 would be met. We have then inflated staff costs in line with Average Weekly Earnings inflation since 2016 and, as the data pre-date auto-enrolment, added three per cent to allow for the requisite employer contribution to a pension scheme. Staff costs have been inflated by a further 5.47% to raise the hourly rate of the lowest paid practitioners to the real Living Wage rate.

The approach to establishing the staff cost element for childminders differs. Childminders are self-employed individuals so instead of staff costs, 'earnings after expenses' is used - stated in the sustainable rate calculation as 70% of gross income from childminding. Ipsos MORI data finds average 'earnings after expenses' to be 65% however their data is based on a very small sample. Consultation with five local childminders revealed that 70% is a fairer reflection of a childminding business in Angus.

For all settings, all other costs associated with ELC have been inflated in line with Consumer Price Inflation since 2016 with the exception of utilities, which has been inflated at a higher rate (six per cent

per year) in line with domestic dual fuel bill increases reported by Ofgem. In years two and three (and for years four and five), the hourly cost is increased by 2.7% each year, estimated for inflation.

The net result is that the council is proposing to pay funded ELC providers a fair price on the basis of reasonable and allowable costs linked to relevant national indices and with the inclusion of a fair allowance for profit / surplus.

Table 1 sets out the estimated cost per hour of ELC in a P&V setting from August 2020, the proposed element of profit / surplus, the adjustment required for increased staff ratios for two year-olds and the proposed sustainable rates for an hour of funded ELC in a P&V setting.

Table 1 - Private and Voluntary (P&Vs)	Aug '20 – Jul '21		Aug '21 – Jul '22		Aug'22 – Jul '23	
	2s	3-4s	2s	3-4s	2s	3-4s
Estimated cost of an hour ELC (all ages)	4.90		5.04		5.17	
Staff ratio adjustment (using 1:7 for 3-4s)*	1.09	-0.23	1.12	-0.23	1.15	-0.24
Sub-total	5.99	4.67	6.16	4.81	6.32	4.93
Profit / surplus @ 8%	0.48	0.37	0.49	0.38	0.51	0.39
Sustainable rate for P&Vs	6.47	5.05	6.65	5.19	6.83	5.32
Snack	0.10	0.10	0.10	0.10	0.10	0.10
Total rate per hour of ELC for P&Vs	6.57	5.15	6.75	5.29	6.93	5.42

* In line with Care Inspectorate registration requirements the actual staff ratio for children aged three to four is 1:8. The sustainable rate calculator uses a 1:7 ratio in recognition that ratios 'flex' during a typical funded ELC day. This approach results in a higher hourly rate for three and four year-olds and a more conservative increase in the hourly rate for eligible two year-olds.

Table 2 sets out the estimated cost, a proposed supplement for eligible two year-olds and the proposed sustainable rates for an hour of funded ELC with a childminder. There is no additional profit element for childminders as this is included in the 'earnings after expenses' figure. Nor is there a clear rationale for a rate adjustment in relation to staff ratios as the same ratio (1:3) applies to childminders caring for all ages under five. In recognition of the more involved needs of eligible two year-olds the council proposes to supplement the childminder rate by 50 pence per hour for eligible twos.

Table 2 - Childminders (CMs)	Aug '20 – Jul '21		Aug '21 – Jul '22		Aug'22 – Jul '23	
	2s	3-4s	2s	3-4s	2s	3-4s
Estimated cost of an hour ELC (all ages)	4.91		5.05		5.18	
Eligible 2s supplement	0.50	-	0.50	-	0.50	-
Sustainable rate for CMs	5.41	4.91	5.55	5.05	5.68	5.18
Snack	0.10	0.10	0.10	0.10	0.10	0.10
Total rate per hour of ELC	5.51	5.01	5.65	5.15	5.78	5.28

When calculating the rate it is assumed that 20% of eligible children (596) will access their funded ELC in P&V settings and ten per cent (261) will use a childminder. The remaining 70% (1748) will access their entitlement in local authority settings. It is also assumed that, of the 857 expected to access their entitlement in a third party setting, 113 children will be eligible two year-olds.

Provision will be made within the new contract to review these rates annually to ensure they align with the latest published inflationary measures. A more in-depth review of assumptions, the sustainable rate calculation and the described methodology is planned in year three in preparation for years four and five (the extension period) should the council opt to extend the provision beyond the three years.

Real Living Wage

Scottish Government's aspiration is for all workers in the ELC sector to be paid at least the RLW. However guidance on the subject is vague and inconsistent. Public procurement law is clearer – public bodies cannot mandate payment of the RLW in public contracts.

Scottish Government has agreed to provide funding for payment of the RLW rate for the hours that workers spend delivering funded ELC. Therefore the council's approach has been to develop a sustainable rate that includes a staff component sufficient to enable the RLW rate to be passed on to staff at least for the time they spend delivering funded ELC. We can and will encourage providers to pass on this component but we cannot make it a requirement.

Scottish Government is clear, and the council agrees, that it is for providers to decide whether all their workers, including those not engaged in the delivery of funded hours (and those engaged in delivery of non-funded hours) will be paid the RLW rate.

Without exception, the council will seek to ensure that all our funded ELC providers are able to demonstrate a commitment to Fair Work Practices and that a fair and equitable pay policy is in place for all their staff.

Whole life open framework value

The estimated annual value of the framework in the first three years is at Table 3 below.

Table 3 – Framework value	Aug '20 – Jul '21		Aug '21 – Jul '22		Aug'22 – Jul '23	
	2s	3-4s	2s	3-4s	2s	3-4s
Estimated P&V children	100	496	100	496	100	496
Hourly rate	6.47	5.05	6.65	5.19	6.83	5.32
Snack rate	0.10	0.10	0.10	0.10	0.10	0.10
x 1140 hours	748,980	2,912,016	769,500	2,991,178	790,020	3,064,685
Estimated CM children	13	248	13	248	13	248
Hourly rate	5.41	4.91	5.55	5.05	5.68	5.18
Snack rate	0.10	0.10	0.10	0.10	0.10	0.10
x 1140 hours	81,658	1,416,427	83,733	1,456,008	85,660	1,492,762
Total cost (all ages)	5,159,081		5,300,419		5,433,127	
Meals (£3x5days) x 50weeks x 857	642,750		642,750		642,750	
Framework value	5,801,831		5,943,169		6,075,877	

The estimated whole life value of the open framework over the five years is estimated to be £30.42mil as shown at Table 4 below.

Table 4 – Whole life framework value	
Years 1-3	17,820,877
Years 4+5	12,596,841
Years 1-5	30,417,718

(Calculated on same basis as years 1-3 above.
Full review of rate calculation planned in year 3.)

Procurement Risks

Provisions under the EU LTR apply to this procurement, namely: Regulations 74 to 76 of Public Contracts (Scotland) Regulations 2015, which primarily cover publication of notices and the principles of awarding contracts; and the EY Treaty principles of transparency, equal treatment and non-discrimination, proportionality and mutual recognition.

The following risks and control measures have been identified by the council's UIG for funded ELC:

Risks	Impact	Likelihood	Controls
STRATEGIC			
Delay in Scottish Government's new electronic management system for ELC	MEDIUM	MEDIUM	Design temporary systems and controls for monitoring funded ELC hours allocated / claimed / paid for etc.
PROGRAMME			
Scottish Government funding allocation does not meet the cost for QFELC	HIGH	LOW	Funding allocation is confirmed for 2020-21 and the council's sustainable rate for funded ELC reflects this. Approach to calculating sustainable rate is transparent and logical and will stand up to scrutiny. It will also support the level of funding claimed in future years. Up take of funded ELC will be monitored and the Director of Schools and Learning informed if demand exceeds expectations. Three months termination clause in the terms and conditions of contract.

Risks	Impact	Likelihood	Controls
PROJECT			
Delay / slippage resulting in no providers on the framework for April 2020 allocations	MEDIUM	LOW	Existing contracts with 29 P&V providers would require to be extended by three months to 31 October 2019.
Challenge of unfair treatment or compromise of any of the EY Treaty Principles	MEDIUM	LOW	All providers invited to engage. Engagement conducted in 'plain sight' and learning shared. PCS Q&A function used for transparency in responding to queries. Proportionate approach to evidencing criteria.
Limited or no interest from providers	LOW	LOW	Sufficient engagement with providers early in the process to ensure they register on PCS and subscribe for alerts from Angus Council.
No suitable tenders received	LOW	LOW	Engaged with Supplier Development Programme to design a bespoke package of training and support for providers wanting to deliver funded ELC.
Not enough providers meet the criteria to become a funded ELC provider	LOW	LOW	The National Standard criteria is predetermined. The council determines the evidence needed to demonstrate the criteria are met and will take a fair and proportionate approach to doing so. In house provision is sufficient to meet overspill at least on a temporary basis. Targeted support will be offered and providers invited to reapply once able to evidence sufficient improvement.
OPERATIONS			
Care Inspectorate grades fall below 4 post-contract award in April 2020	LOW	MEDIUM	Targeted support will be delivered by the EY Central Team and a fair service improvement period agreed. A discretionary probationary period may be applied.
CI grades fall within 12 months of contract start date (01 August 2020)	LOW	MEDIUM	As above.

Procurement strategy conclusions

To put in place a bespoke open framework for the provision of funded ELC for a period of three years from 01 August 2020 to 31 July 2023, with the option to extend provision by up to two years..

To publish a contract notice in PCS for onward transmission to OJEU and to follow the 'open procurement procedure' using the Procurement Journey pathway on PCS.

To pay a sustainable rate for funded ELC which would meet the costs today (August 2020) of 70% of the providers surveyed by Ipsos MORI in 2016.

To inflate the 2016 cost data sufficiently to accommodate payment of the RLW rate for funded ELC hours and to factor in wage and other inflationary measures in the proposed sustainable rates for years two to five.

To review the sustainable rate calculations and methodology in year three ahead of implementing any extension period.

Major Procurement

This procurement is considered to be a 'major procurement' within the meaning of Angus Council Financial Regulation 16.8.4