



E: ELCPartnershipForum@gov.scot

April 2021

Will I still be charged childcare fees while the setting my child attends is closed or is subject to public health restrictions due to COVID-19?

ELC funded entitlement

1. The entitlement to funded early learning and childcare must be provided without the payment of fees, including where this is delivered through a third party (i.e. providers in the private and third sectors, including childminders). This is a long-standing legal requirement, set out under section 33(1) of the Standards in Scotland's Schools Act 2000.

2. Any charges which are in addition to the funded early learning and childcare entitlement should be for optional extras, and limited to, for example, costs of outings or extracurricular activities. These optional charges include where a setting offers an additional services such as the provision of localised cover arrangements required by parents and carers (for example, acting as the emergency contact for a child, cover for shift patterns, holiday cover, etc.) which requires the setting to retain a place in order to meet this demand.

Cancellations and refunds for the non-statutory entitlement

3. All charges that businesses want to make must comply with the law. Where a business is allowed to make charges (outwith the funded entitlement), they must ensure they give their customers full and accurate information about the charge, and not use unfair contract terms. In particular businesses risk breaking the law where they try to charge for services which have not been provided so they should seek advice.

4. The Competition and Markets Authority (CMA) has published a [statement](#) setting out its views on how the law applies to cancelled consumer contracts and refunds during the COVID-19 pandemic. The CMA has also provided [advice](#) and published an [open letter](#) to early years settings providing its views on the way consumer protection law applies where services cannot be provided due to public health restrictions.

5. Childcare providers should not charge for services which they cannot provide, and should not put pressure on parents to make payments, for example in order to keep their child's place when the setting re-opens. The CMA expects providers to be reasonable and balanced in their dealings with parents when applying charges when settings are closed, recognising the unprecedented situation brought about by the COVID-19 outbreak.

6. Further, providers should be cautious about charging parents who wish to withdraw their child from an early years setting during a lockdown. There are legitimate reasons why it may be appropriate for a whole household to remain at home, including where a member of the family is shielding and where law or

guidance requires a member of the family to stay at home. Other reasons would need to be considered on a case-by-case basis with reference to the restrictions placed on people by the new coronavirus regulations, which may change over time and across different locations. A contract term which requires payment even where no service is being provided by the nursery or cannot be legally accessed by the consumer is likely to be unfair, as are terms which require extensive notice periods.

7. Each case needs to take account of individual contracts considered from the perspective of both parties and the application of the law and guidance to both providers as businesses and parents as consumers. Where a consumer is prevented from receiving services because the law or guidance or restrictions prevent its use or make it illegal to receive or use a service (e.g. families are asked to self-isolate, or because of track or trace, etc.) then payments cannot be insisted upon.

8. There will always be individual circumstances in each case, however, the general principle is that providers should not charge parents for services that cannot be provided. If there is a barrier to accessing childcare, based on government guidance or the law, the provider should not charge the consumer for this period. For example, if a child is self-isolating either because they have developed symptoms, or have been notified they have been in close contact with a person who has tested positive, the provider should not charge the consumer for this period.

Childcare settings in Scotland

9. In light of the CMA advice, the Scottish Government expects that it should be of particular importance that childcare providers are sensitive to families' financial situations when considering their charging policies as some families may not be able to afford additional costs, particularly at a time when the country continues to respond to the extraordinary circumstances brought about by the COVID outbreak.

10. Parents, as consumer's, may wish to seek further help and advice from [Trading Standards Scotland](#) or from Advice Direct Scotland (ADS). They may also wish to pursue their own action through the courts if they consider that the provider is in breach of consumer protection laws. However, we would hope that such a measure would be a last resort and that, through constructive conversations between providers and parents, a satisfactory resolution that meets both party's expectations can be found.

Directorate for Early Learning and Childcare
Scottish Government