

June 2021

Charging of fees by childcare services during COVID-19 closures or self-isolation

Introduction

This is a revision of the information the Scottish Government provided to the childcare sector representative bodies on 23 April.

That information intended to convey the advice received from the Competition and Markets Authority (CMA) on charging policies during COVID-19, particularly where it relates to the non-statutory hours.

The CMA advice is their understanding of consumer protection law and how it interacts with the rules and guidance during the COVID-19 pandemic. The Scottish Government has no competence in respect of enforcement of consumer law which is a reserved matter.

In the light of concerns expressed by childminders in respect of our earlier note of 23 April, we have revisited this note following further input from the CMA. The note now also reflects the CMA's advice regarding existing contract terms that provide for low level payments in respect of costs, or other voluntary arrangements that parents and providers may fairly agree, when the service cannot be provided for example because a setting is closed or a child is self-isolating.

Charging for privately funded childcare is and remains a matter of contractual arrangement between a childcare provider and the family concerned.

The Scottish Government's position (set out in paragraphs 9 and 10 of the note below) remains that we hope any concerns over charging policies can be fairly and satisfactorily resolved between parents and providers through constructive dialogue. This is especially important at this particularly challenging time for the childcare sector and families relying on early years services.

Will I still be charged childcare fees while the setting my child attends is closed or is subject to public health restrictions or where my child is self-isolating 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.

Charges, cancellations and refunds for non-statutorily funded childcare

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) published a [statement](#) in August 2020 setting out its views on how the law applies to cancelled consumer contracts and refunds during the COVID-19 pandemic. This should be read in conjunction with the [advice](#) and [open letter](#) the CMA published in July 2020 specifically in relation to the early years sector, setting out its views on the way consumer protection law applies where services cannot be provided due to public health restrictions.

5. The advice from the CMA is based on the general principle that childcare providers should not charge for services which they cannot provide, and should not put pressure on parents to make payments when those services cannot be accessed. 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. The CMA sets out that each case needs to take account of individual contracts and circumstances considered from the perspective of both parties and the application of the law and guidance to both providers as businesses and parents as consumers. There will always be individual circumstances in each case, however, the general principle is that providers parents should not have to pay full or excessively large fees for services that cannot be provided e.g. if there is a barrier to providing or receiving childcare, based on government guidance or the law.

7. The CMA noted in its published statement that it would be unlikely to object to an existing term in a contract which allows a business to request payment of a small contribution to its costs while the provision of the service is disrupted (provided such payments are of a low amount, to cover direct, unavoidable costs only, and taking into account savings the business can make, e.g. by furloughing staff).

8. Separately, early years businesses and parents might both agree to revise their obligations under the contract, and some parents may also agree to voluntarily continue to make some payments during temporary breaks in service. Such voluntary arrangements should be fairly agreed, and the business should not pressurise the consumer in any way to accept the new arrangement. Providers and parents should read the CMA statement and advice fully.

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. The Scottish Government also recognises that childcare providers have experienced a challenging period during the pandemic, and that some may rely on ongoing voluntary contributions to their costs during periods of closure or self-isolation.

10. Parents, as consumers, may wish to seek further help and advice from local trading standards services, details are available through [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.

Early Learning and Childcare Directorate
Scottish Government
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