

Appendix 1: Current Position

Review of rents and lease arrangements for early years and family support providers - agreed by County Council Executive 10 June 2003

1. Voluntary Early Years or Childcare providers who enter into formal partnership or service level agreements with the County Council to provide services required by statute on site in the Council ownership the following guidelines should apply
 - In all cases organisations will meet their own operating costs (energy, water, insurance, cleaning etc) internal repairs and maintenance costs and professional fees incurred in the formulation of the lease. In addition to this,
 - Organisations using rooms within a school building should pay no rent and external repairs and maintenance costs will be met from schools' delegated budgets
 - Organisations using their own premises located on school sites should pay no ground rent but will meet all other costs associated with their [premises
 - Organisations using separate premises surplus to school requirements should pay no rent and the County Council will meet external repairs and maintenance costs
 - The County Council will meet its own costs in setting up such lease arrangements
2. For Voluntary Pre-schools without a formal partnership or service level agreements with the County Council
 - Pre-schools using rooms within a school building owned by the County council – pay a share of premises cost plus rent based on floor area occupied at £20per m² - last reviewed in 1995)
 - Pre-schools on their own premises on school sites are charged a standard annual ground rent at £150pa - last reviewed in 1995
 - Pre-schools exclusively surplus school buildings, owned by the County Council are charged a rent, which takes into account the market rate and each agreement is individually negotiated. Pre-school expected to meet their own legal and surveying costs as well as:
 - A standard one off charge of £500 to be paid the County Council towards the cost of producing a new lease for sites and buildings owned by the County Council. In the case of buildings owned by school trustees fees incurred by the trustees will need to be met
 - Actual costs to the County council for subsequent variations to the lease when requested by the Pre-school
 - Legal costs incurred by the owner of any site or land required for access if this is not the County Council. For example school trustees. School trustees are legally required to appoint an independent agent
3. Commercial Pre-school and Childcare Groups

School premises may be available to these groups but a different charging structure applies. For example the rental charge is a commercial market rent, negotiated individually, and commercial pre-school and childcare groups need to cover the full cost of the County Council professional advisors in drawing up the lease.

Appendix 2: Key changes since 2003

	Free Early Education	Childcare
From 2001		Expansion of out of school childcare. Initially prime pumped with Lottery funding and later Sure Start Grant. Start-up funding continues to be available through the Council's Early Years and Childcare Grants programme
2004	Entitlement expanded to all 3 year olds	
May 2006		Extended Schools programme – included an expectation that schools facilitated access to out of school childcare
Childcare Act 2006	Statutory duty to ensure sufficiency	Statutory duty to ensure sufficiency
Circa 2008	Partnership Foundation Stage Unit agreements entered into by Council *	
2009/10	Piloting the entitlement for some 2 year olds began	
September 2010	Entitlement increased from 12.5 hours to 15 hours per week	
January 2013		More Great Childcare - the government's vision and plans to ensure more affordable, high quality childcare
September 2013	Entitlement for some 2 years olds (approximately 20% nationally)	
March 2014		Children's and Families Bill 2013 receives royal assent– this paves the way to implement proposals, including making it easier for schools to offer out of school childcare either themselves or through 3 rd parties
September 2014	Entitlement for some 2 years olds extended to approximately 40% nationally – around 2,000 children in Oxfordshire	

* Partnership Foundations Stage Unit (PFSU) are legal agreements that have been entered into by the County Council, along with the school and pre-school. These agreements set out partnership working arrangements and were particularly concerned with mutual working to ensure the delivery of high quality provision. However the Council is no longer supporting PFSUs, as it does not have the resources to support these arrangements.

PFSU agreements are continuing service level type agreements that have termination events. However the separate, but associated premises agreements, are now coming up for review/renewal and this is resulting in ambiguous position for both the school and pre-school, as the associated premises agreements are conditional on the PFSU agreement continuing.

Appendix 3: Premises guidance for school governors

Extracts from the "[Governors' Handbook - For governors in maintained schools, academies and free schools](#)", published by the DfE September 2014

Extracts from 6.3.2 Use of premises

Schools can accommodate extended and community services. Examples include after-school clubs, adult education, out-of-school childcare (including breakfast clubs and holiday care), and sport and youth clubs. Some schools offer or rent out their facilities to voluntary organisations.

Governing bodies may not use their delegated budget shares for anything other than the purposes of the school. The term 'purposes of the school' would normally be interpreted as including all activities that bring an educational benefit to pupils at the school. The term also includes spending on pupils registered at other maintained schools and providing community facilities for charitable services¹ (see below).

Governing bodies can charge for the provision of extended and community services².

6.3.3 Transfer of control agreements

Governing bodies can enter into a Transfer of Control Agreement (TofCA) as a way of sharing control of the school premises with another body, or transferring control to it. The other body, known as the 'controlling body', will continue to occupy and use the premises during the times specified in the agreement. Transferring control of the premises to local community groups, sports associations and service providers can allow school facilities to be used without needing on-going management or administrative time from the school staff. The governing body of a community school must obtain the LA's consent before entering into a TofCA that transfers control during school hours.

It may not be necessary for a school to enter into a TofCA to enable another organisation to use their premises. Alternative options for a school include retaining overall control of the premises while subletting use of part of their premises to another organisation or entering into a Service Level Agreement with another organisation.

OCC officers note: - Correct management of these agreements is essential to ensure other users do not acquire unintended rights of occupancy by accident.

6.4.1 The 'charitable purpose' requirement

The governing body of a maintained school has the power to provide, or enter into contracts to provide any facilities or services that will further any 'charitable purpose' for the benefit of pupils at its school, families of pupils or people who live and work in the local community³. This power is in addition to governing bodies' powers and responsibilities on the control and community use of school premises. 'Charitable purposes'⁴ may cover such services and activities as:

- childcare (including before and after school and during the holidays);
- adult and family learning;
- health and social services; and
- parenting support and other facilities of benefit to the local community. Examples include access to information and communication technology (ICT), or sports facilities.

Appendix 4: Considerations

When considering an overall strategy and guidance for the use of school/council premises, by 3rd party providers of early years and/or childcare provision, the following are considerations:

- the local authorities' statutory duties to secure sufficient provision of high quality
- supporting the Council's development work, to ensure sufficiency of childcare places. This includes working with school's to encourage provision on school sites. This is in response to government initiatives and also that often the best place for provision is the school site, where the children attend for their statutory school place.
- ensuring accessibility to and affordability of provision for families
- provision needs to be financially sustainable

¹ See section 27 of the Education Act 2002.

² See section 27(3) of the Education Act 2002.

³ Section 27 of the Education Act 2002.

⁴ the Charities Act 2011.

- the Council has a long history of encouraging pre-school providers to use school sites.
- encouraging greater use of school premises through the provision of integrated care and education, with benefits for children, school and parents, including supporting parents to be economically active
- recognising that the services provided are usually for children that are pupils, or future pupils, of the school.
- the need for providers to have reasonable certainty of premises, so that they can plan ahead to deliver high quality, reliable and sustainable provision.
- ensuring that there is clear guidance and a transparent policy for entering into premises agreements. This should recognise that there are wider benefits and considerations to be taken into account
- the different types of schools involved
- early years and childcare provision operates in a mixed market economy but often with many similar operating costs
- Council policies and procedures
- property law, particularly avoiding ensuring that unintended rights of occupancy are not created
- cost implications to both the Council and schools

In addition there is added value for the Council, including support with the delivery of statutory duties, and usually for the school/academy, resulting in considerations, which may mean that the arrangements are not purely commercial transactions.

Benefits/considerations for Schools/Academies

Whilst recognising that schools/academies are likely to wish to maximise their income from external bodies, which use their premises, there are some particular consideration to be taken into account around delivery of early years and childcare provision

- If a primary age school/academy then any pre-school on site is highly likely to be a main source for children who will attend the school/academy in the future
- Opportunities for partnership for benefit of children and their future attainment, including improved transitions. Opportunities to support/influence the delivery of high quality provision
- Schools/academies have the opportunity to enter into a working partnership agreement for the benefit of children and their attainment, in addition to the premises agreement (along the lines of PFSU agreement – see *appendix 2*)
- Where funding for the building came from, including in some cases pre-school fundraising. Note- if charities monies have been utilised then the provider is legally obliged to ensure the charity assets are protected/value for money obtained
- Opportunities for joint fundraising e.g. funding for jointly used outside area
- What is the ability to rent out premises to an alternative, suitable user whilst the school is operating i.e. what is the market rent that could realistically be achieved? This could vary significantly depending upon location of the building and access to it.
- Pre-school can/may be able to provide provision for pupils of the school/academy e.g. wraparound and out of school childcare
- Reputation if school/academy actions close a pre-school and/or out of school provision. On the other hand the schools/academy reputation is a consideration if provision is of poor quality
- If early years and childcare services close then local community likely to look to school/academy to replace them – what would the impact be on the school/academy? e.g. experience to deliver, staffing and finances
- The level of rent (if any) charged by the school will have a direct bearing on the fees the provision needs to charge, in order to be economically viable, and therefore how affordable/accessible the provision is for families.
- Does Out of School provision benefit the school as a whole, including making the school more attractive to families (increases the school roll)?

- Does the Out of School provision benefit the children's learning and attainment? – Most out of school provision is seen as bringing educational benefit and can be classed as a pupil focused activity, which can be supported by the school budget and/or pupil premium.

Wider context

- a) Pre-school deliver statutory places for funded 2, 3 and 4 year old children i.e. support the sufficiency duties contained in the Childcare Act 2006
- b) Pre-schools principal income is Nursery Education Funding (NEF), funded by Dedicated Schools Grant through a funding agreement with OCC
- c) NEF is not generous, resulting in many pre-schools relying upon fundraising to cover running costs and/or cover replacement equipment. In all sectors wages are often low due to funding constraints
- d) Pre-schools are voluntary managed, mostly by parents, and are not for profit organisations. Most are registered charities
- e) All early years providers are registered with and inspected by OFSTED and have to meet the same EYFS standards and early education requirements as school/academy nursery and foundation classes.
- f) OCC monitor Ofsted inspection outcomes and support settings with satisfactory (requires improvement from 4 November 2013) and inadequate judgements, with the aim of improving quality to achieve a good or better outcome at next inspection.
- g) OCC has a clear policy for withdrawing NEF funding where quality is poor – a premises agreement should include a clause stating the agreement can be terminated in the event of NEF being withdrawn
- h) Most childcare providers are registered with Ofsted, providing an independent measure of quality
- i) Section 123 of the Local Government Act 1972, means it is considered a disposal of council land if lease > 7 years is granted.

This is critical and is all important in law. If a lease is over 7 years then it gets registered at Land registry as a charge on the property and occupancy agreement would have to be very carefully worded, in order to avoid unintended consequences and rights being created

Appendix 5: Rationale for Property recommendations

- A consistent approach is needed for the use of any part of a school site proposed to be used for the provision of early years and childcare provision
- OCC has a statutory duty to ensure satisfactory provision is available across the county.
- The current policy/guidance regarding charges for early years and childcare providers is outdated as a consequence of changes in legislation, local authority duties and reduced resources within the Local Authority
- Specific facilities for early years and childcare provision means that school sites are often preferred location for organisations providing the service.
- Many providers are not for profit charitable organisations where any surplus made by the facility is specifically required to be re-invested in the facility.
- Any charges made for the use of the property ie. rent will have a direct effect on the cost of the provision to parents/ carers using the service
- NEF is not generous and early years and childcare providers rely on fund raising to cover all operating costs
- Early years and childcare services on school sites are usually for children who are or become pupils of the school and such provision encourages greater use of school sites and school buildings with extended services.

A. Providers of Nursery Education Funding (NEF) places (including those also offering childcare places)	Rent	Comment
Organisations located on school sites, providing its own building. e.g. prefabricated/ temporary buildings	<p>£500 per annum (ground rent)</p> <p>Temporary building ave size = 1600sq,ft</p> <p>Annual rent = 1600@£3.00psf = £4800 pa</p> <p>10% of annual rent = £480 per annum</p> <p>Say £500 per annum</p>	<ul style="list-style-type: none"> • The tenant is responsible for all repairs and maintenance and for the removal of the building at the end of the lease. • The rent reflects the use of the land and is based on the average commercial rent of £12.50 in Oxfordshire (current rents between £10-15.00 per sq .ft for town centre office use) • a discount of 50% has been applied for use of the site as a community use which is in line with Children’s centre rents = £6.00 per sq.ft • a further 50% discount has been applied to reflect the specific users acceptable on a school site which are required to be compatible with the main educational use and comply with safeguarding requirements = £3.00 per sq.ft • A ground rent has been set on the basis of 10% of the annual rent achievable for an average 15mx10m temporary building
Organisations using school/council building e.g. surplus school buildings/rooms	£3.00 per sq.ft /£30 per sq.m per annum	<ul style="list-style-type: none"> • The tenant is responsible for internal repairs and maintenance and running costs • A rent recommended is on the same basis as the above ground rent with discounts for community use and the specific school compatible uses • It may be appropriate to include a clause requiring the tenant to make reasonable contributions to exterior repairs and maintenance costs for the area of exclusive use. For example the lease terms granted on OCC land, which forms part of a church school site, can impact on completing any subsequent statutory transfer
Day nurseries	A rent, negotiated individually	Continues existing arrangements
B. Providers solely providing breakfast clubs, after school clubs, holiday playschemes.		
Not for profit/low margin organisations –	Peppercorn	These out of school services

<p>includes social enterprises and sole traders where the owner works in the provision</p>		<p>generally run close to break even. Any costs associated with offering the childcare will have a direct effect on charges made for pupil places, therefore only the contribution towards utility/ additional security and caretaking costs will be payable as apportioned by the school based on floor area and hours of use. Social enterprises are required to re-invest any surpluses back into the service</p>
<p>Commercial organisations</p>	<p>A rent, negotiated individually; either based on schools individual hire policy for accommodation used out of school hours, or based on £6.00 per sq.ft apportioned for hours of use.</p>	<p>Large commercial organisations may offer holiday scheme services to schools and do make profit, therefore the use of school premises should be on the basis of a rent payable by the commercial organisation at the discretion of OCC/ school. The rent payable has been proposed on the basis of the discounted rent described above subsequently apportioned for hours of use.</p>