

**CABINET MEMBER FOR CHILDREN, EDUCATION & FAMILIES
8 DECEMBER 2014**

**REVIEW OF RENT AND LEASE ARRANGEMENTS FOR EARLY YEARS AND
CHILDCARE PROVIDERS OPERATING ON SCHOOL OR COUNCIL SITES**

Report by Director for Children Education & Families

Executive Summary

1. The last review of rents and lease arrangements for early years providers, operating on school premises, was carried out and approved by the Council's Executive in 2003 – see appendix 1
2. Since 2003 there have been many significant developments and changes in national policy for both funded early education and the provision of childcare – *see appendix 2*
3. These include the introduction of statutory sufficiency duties for Local Authorities to secure sufficient provision and an expansion of childcare provided on school sites.
4. The current coalition government has a clear desire to see access to more childcare on school sites, providing an 8am to 6pm offer of integrated education and care for children. The Children and Families Act 2014 paves the way to implementing a range of proposals, including making it easier for schools to offer out of school care, either directly themselves or through 3rd parties.
5. These changes are against a current background of the availability and affordability of childcare being a significant concern of all the main political parties, local authorities, families, organisations concerned with the well-being of children and families, and many providers.
6. In light of the above there is a need for the Council to provide clear, consistent and transparent additional guidance to support both schools and providers.

The local authority's sufficiency duties

7. The Childcare Act 2006 requires the local authorities to:-
 - Secure sufficient childcare for working parents or parents in education/ training - Section 6

This means securing the right type and volume of provision, so far as is reasonably practicable, for working parents, or parents who are studying or training for employment, for children aged 0-14 (up to 18 for a disabled child).
 - Secure early years provision free of charge (Nursery Education Funding) - Section 7

This means securing provision, so that families can access their free early education entitlement of 570 hours, over a minimum of 38 weeks per year, for **some 2 year old** (approximately 2,000 in Oxfordshire) and **all 3 and 4 year old** children.
8. Delivery and funding of the sufficiency duties:-

- Both early years and childcare places are delivered by a mixed market of voluntary, private and independent providers, including childminders, along with schools and academies.
 - **Childcare places** are expected to be self-sustaining from parental fees. In some circumstances parents are able to obtain support with their fees. This includes help with some (maximum 70%) of the childcare through Working Tax Credits for lower income families (support tapers as household earnings increase).
 - **Early years entitlement** is free to parents at the point of delivery. Providers are funded through the Dedicated School Grant as Nursery Education Funding (NEF). An Early Years Single Funding Formula (EYSFF) is agreed, through the School's Forum, and sets the rates for NEF. EYSFF includes an element for premises costs
9. All voluntary, private, independent providers, including childminders and academy providers of NEF enter into a legal agreement with the Council for the delivery of the places. The agreement includes the quality standards required. Ofsted is the sole arbiter of quality.

DfE Guidance for Schools

10. Guidance is available in the "[Governors' Handbook - For governors in maintained schools, academies and free schools](#)"¹
- The latest version was published by the DfE in September 2014 and relevant extracts are contained in *appendix 3*
 - The guidance details the legislation that provides school governors with the powers to enter into premises agreements for use of school premises in order to accommodate extended activities and community services. It is also explained that charges can be made for the use of school premises and if the use is for "charitable purposes" (this includes childcare) then it is permitted to use the school delegated budget.
- ¹ www.gov.uk/government/publications/governors-handbook--3
11. The need for additional local guidance
- The DfE guidance does not advise on the premises charges to be made.
 - In most cases schools and 3rd party early years and childcare providers are able to arrive at an agreement over the property charges.
 - There are occasions when schools seek guidance on what to charge childcare providers and a few occasions where schools and providers have been unable to reach agreement on the premises charges to be made.
 - In some instances uncertainty has arisen over the premises costs to be charged at renewal of leases, particularly where a Partnership Foundations Stage Unit (PFSU) agreement (*see appendix 2*) exists, as the council no longer has the resources to support these arrangements. This can create friction between schools and early years providers, following inconsistent advice being given and some proposals that affect sustainability of provision. This can result in considerable officer time being spent supporting negotiations.

- The Council's Legal Team recommends that there should be a signed lease or licence in place before a 3rd party organisation occupies the premises. This is considered essential to ensure that potential legal rights to occupy premises are not inadvertently created prior to, or without a formal agreement, being in place.
- In light of the above there is a need for the Council to provide clear, consistent and transparent additional guidance to support both schools and providers. This will also help support delivery of statutory sufficiency duties, along with the access to and affordability of provision for parents. The Council can only make recommendations to academies and church schools, as they have ownership/control of the premises, but it is recommended that the current policy is updated for community schools and that the same policy is implemented should council buildings be used to deliver these services.

Considerations

12. There are many considerations to be taken into account, including:-
- the local authorities' statutory duties to secure sufficient provision
 - supporting the Council's development work, to ensure sufficiency of childcare places. This includes working with schools 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, as it facilitates integrated care and education,.
 - ensuring accessibility to and affordability of provision for families
 - The considerations are set out in more detail in *appendix 4*

Key changes proposed from 2003 decision

13. On Legal Team's advice
- a. guidance on having a signed lease or licence in place before a 3rd party organisation occupies the premises has been included
 - b. in the case of community schools, where the council is usually the land owner, there is a recommendation that it is a requirement that the Council is the party that grants the lease or licence (this confirms current usual practice)
14. The link between Partnership Foundation Stage Units (PFSU) partnership agreements and preferential property arrangements is removed. This is because the Council no longer has the resources to support PFSU arrangements.
15. There is consistent property charging terms for all providers of funded early education. This was a recommendation from the Early Years Working Group (a sub group of the Schools Forum). It reflects that all these providers contribute to the Council's statutory duty, are funded at the same rate, operate in the same market and have similar operating costs.
- The introduction of new arrangements for out of school provision.
16. This reflects that there has been an expansion of out of school care on school sites, the government's desire to see further expansion, the Council now having a duty to ensure sufficient childcare provision and that the cost of childcare being a significant concern. The proposal recommends that 3rd party providers have the same arrangements that become the practice for schools when they are directly providing

these services. It reflects that most providers operate as social enterprises and/or work on fine margins. However when large (80 to 100 place) holiday playschemes operate, typically just for part of the summer holidays, then there is a clear commercial venture, it is proposed that a commercial rent remains.

17. The introduction of the same arrangements should Council premises be used to deliver these services

Financial and Staff Implications

18. The recommendations potentially reduce the income that could be derived from renting school/council premises. However it is considered appropriate to discount a market rent in order to assist with fulfilling statutory obligations by offering affordable rents.
19. Costs for the Council's legal and agents fees in relation to the completion of the lease/licence will be recovered.
20. There are no other staff implications as the services are managed by and delivered by employees of the organisation occupies the premises.

RECOMMENDATIONS (see appendix 5 for detailed rationale)

The Cabinet Member for Children, Education & Families is **RECOMMENDED** to:-

- (a) **confirm support for the principle that school premises should be available for suitable community and extended services, particularly access to more childcare on school sites, providing an 8am to 6pm offer of integrated education and care for children;**
- (b) **implement the premises charges contained in Annexe 1 for arrangements being made between community schools and 3rd party early years and childcare providers, where the parties themselves cannot agree the charges, and when other council premises are used to deliver these services;**
- (c) **recommend the arrangements contained in Annex 1 to all other schools, including those operated by Diocesan authorities (voluntary controlled and voluntary aided schools) and academies in Oxfordshire.**

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**PREMISES ARRANGEMENTS for
EARLY YEARS and CHILDCARE PROVIDERS OPERATING on
SCHOOL or COUNCIL SITES**

The following premises arrangements are applicable for agreements between community schools and 3rd party early years and childcare providers. Schools may use the powers contained in the Education Act 2002 to agree alternative charging arrangements but in the absence of an agreement the charges below will apply. These arrangements are also applicable when other council premises are used to deliver early years and childcare services.

These arrangements are also recommended to all other schools, including those operated by Diocesan authorities (voluntary controlled and voluntary aided schools) and academies in Oxfordshire.

1. There must be a formal lease or licence in place, before the organisation occupies the premises.

A lease will be required where the organisation will have exclusive possession of the premises or may be required where the organisation has exclusive possession of the premises during designated hours. The lease will be contracted out of sections 24-28 Landlord & Tenant Act 1954.

A licence will be required where occupation of the premises is shared with the school.

2. In the case of community schools Oxfordshire County Council will be the party to grant a lease or licence, with agreement being drafted up by Law and Culture (Legal Services)
3. Organisations should meet their own running costs which includes gas, electricity, water, insurance, cleaning etc. This may be charged by the school as a percentage of actual costs incurred by the school apportioned based on floor area occupied by the organisation.
4. Organisations will be responsible for paying the Council's legal and agents fees in relation to the completion of the lease/ licence. The Council is to keep costs as low as possible by using template heads of terms and agreements wherever possible
5. Any rents payable will be paid into school budgets
6. Organisation pay rent on the following basis:-

A. Providers of Nursery Education Funding (NEF) places (including those also offering childcare places)	Rent	External Repairs	Internal Repairs	Running costs
<ul style="list-style-type: none"> Organisations located on school sites, providing its own building. e.g. prefabricated/ temporary buildings 	£500 per annum (ground rent)	Tenant	Tenant	Tenant usually by way of separate meters
<p>Note - Where the charges are to be implemented when leases are due to expire before end 2015, there will be a stepped increase from the current annual ground rent payable of £150 to £300 in years' one and two of the new lease until year three when the full rent of £500 per annum will become payable. For any new lease negotiations the full rent will be imposed with immediate effect.</p>				
<ul style="list-style-type: none"> Organisations using school/council buildings e.g. surplus school buildings/rooms 	£3.00 per sq.ft /£30 per sq.m per annum	Landlord/ Delegated schools budget*	Tenant	Tenant by way of apportioned costs or separate meter
<p>Note: the rent charge will be principally payable on the area of exclusive use.</p> <p>* 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.</p> <p>Where other areas of the school property are intended to be shared e.g. ball pools, school halls, this will be negotiated separately and based on the hours of use of those shared areas and times of use</p>				
<ul style="list-style-type: none"> Day nurseries 	A rent, negotiated individually	As agreed between parties	As agreed between	As agreed between the

			the parties	parties
B. Providers solely providing breakfast clubs, after school clubs, holiday playschemes.	Rent	External Repairs	Internal Repairs	Running costs
<ul style="list-style-type: none"> Not for profit/low margin organisations – includes social enterprises and sole traders where the owner works in the provision 	Peppercorn	Landlord/ Delegated schools budget	Landlord / Delegated schools budget	Tenant by way of apportioned costs or separate meter
<ul style="list-style-type: none"> Commercial organisations 	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.	Landlord/ Delegated schools budget	Landlord/ delegated schools budget	Tenant by way of apportioned costs charged by the school

In addition:-

I. For providers of Nursery Education Funding (NEF) places, including those also offering childcare places

- The landlord will have the right to terminate the lease/ licence in the event that the NEF is withdrawn by the Council, in accordance with the NEF agreement, with Ofsted being the sole arbiter of quality

II. For providers solely providing breakfast clubs, after school clubs, holiday playschemes.

- The lease/ licence contains a clause giving the right to terminate the agreement in the event of the provision being considered inadequate, either by reference to an Ofsted inspection or where there is no Ofsted registration, by the landlord at the landlords absolute discretion.